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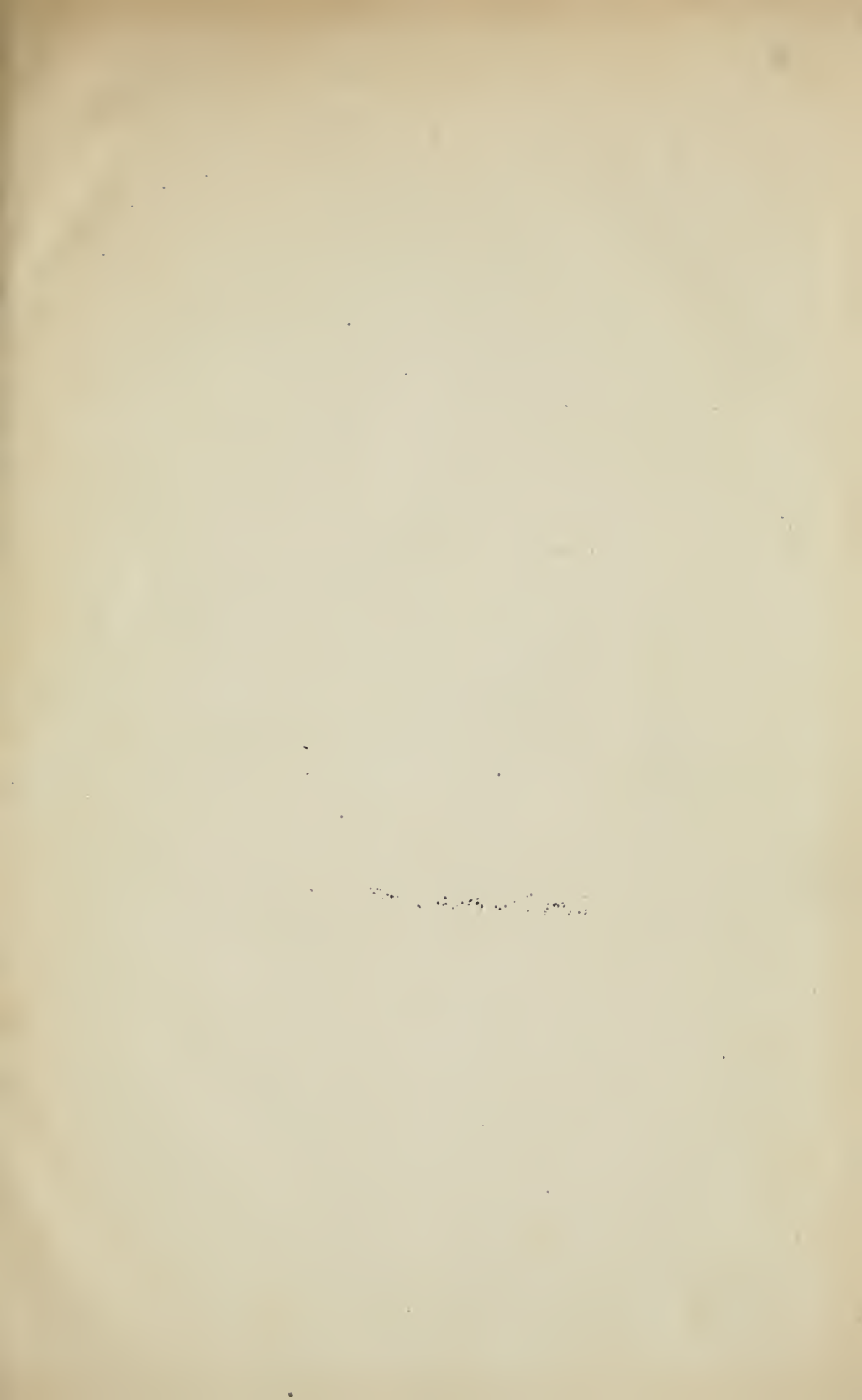
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I.H.S.





INCIDENTS

IN THE

LIFE OF JACOB BARKER,

OF

NEW ORLEANS, LOUISIANA;

WITH

HISTORICAL FACTS, HIS FINANCIAL TRANSACTIONS WITH THE GOVERNMENT,
AND HIS COURSE ON IMPORTANT POLITICAL QUESTIONS,

FROM 1800 TO 1855.

WASHINGTON:
1855.

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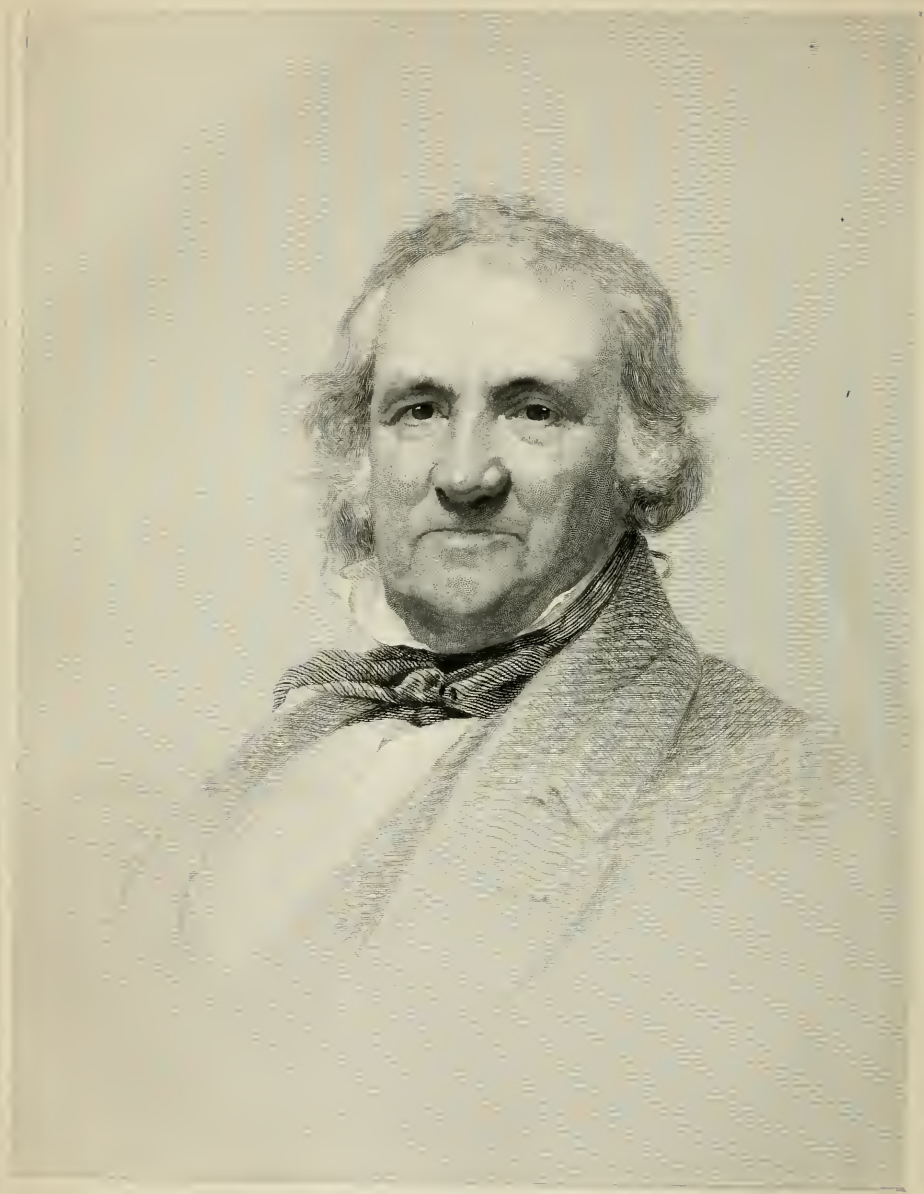
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Jacob Barker

INTRODUCTION.

THE object of this book is to present the genealogy of JACOB BARKER to his fellow-citizens, with some incidents of his eventful life, which has already extended more than three-quarters of a century, with a narrative of his friendly relations with many distinguished men, and of his combats with those who endeavored to impugn his every act. Mr. Barker is particularly anxious to have his political opinions perpetuated, and that his action in the support of his country at the time of her greatest need should be known in detail, and finally, that the facts which constitute the merits of his existing claim on the government of the United States for money lent to carry on the war with Great Britain of 1812, should be placed before the public. He cannot but think that if a member of the Federal party, when they were in power, had rendered similar services, he would have been dealt with very differently; the whole land would have resounded with his praise.

The reader may find some interest in the perusal of the letter of General Washington to Mr. Madison; the articles of the Philadelphia Association, formed ten years before the revolution, not to import British fabrics; the history of Nantucket; the character of John Wells; incidents in the life of General Armstrong; the opinions of many illustrious men as expressed by themselves; the speeches of Mr. Barker and of his counsel on the duelling and conspiracy trials; the certiorari of Judge Woodworth; a review of the causes which led to the war of 1812; of the restrictive system; of the battle of Bladensburg; of the capture of the city of Washington; with Mr. Barker's remarks concerning a national bank; the finances of the nation; its currency; the Democratic and Federal parties; a chronological sketch of the ancestry of Doctor Franklin. From these points, taken together, some interesting facts connected with the history of the country may be gathered.

The Author has had free access to the journal, correspondence, and other papers of Mr. Barker, and been permitted to select therefrom for publication such as he might think would be of interest to the reader.

Mr. Barker's political opinions subjected him and his measures to the uncompromising hostility of those who entertained different views, the effect of which was to sharpen his appetites, lead him into combat, and urge him forward totally regardless of consequences; this, together with his pride of opinion and love of victory, occasioned him many difficulties which men less impulsive and less confiding in themselves would have avoided; the freedom with which he handled his opponents indicated his confidence in the goodness of his cause, and established the independent character of his mind.

From what was said and written by himself and by his friends, the reader will be enabled to form a better opinion than from anything the Author can add; his temperance, industry and enterprise, may be thought worthy of imitation by those youths who have to wrestle with the rough and selfish world for fortune and fame; his example may inspire them with confidence to undertake what otherwise would seem fraught with too many difficulties. Although friendless and penniless, with a very limited education, he did not hesitate to embark on a sea of uncertainty in transactions of the first magnitude, and accomplished much.

The result of some of Mr. Barker's operations will be here detailed, and nothing will astonish the reader more than to be told that the man capable of originating and executing such plans, who, by his own exertions, rose from humble life to be the pivot on which this important nation rested at one of the most important periods of its history, had the control of countless millions a great portion of his life, owned fleets of ships, steamboats, num-

berless houses and stores, dealt with emperors, kings and republics, should, when those earthly gods vanished, devote himself with apparent pleasure and elasticity to an humble business scarcely sufficient to maintain his family.

All impartial readers will feel pain that better success had not rewarded such enterprise, such plans, which, in many cases, came very near resulting magnificently, frequently overthrown by unlooked for occurrences which no human skill could have guarded against.

Matters relating to the demand of personal satisfaction from a director in the North River Bank, to the conspiracy trials, to the currency, loans and a national bank, will occupy so much room that many of the incidents of Mr. Barker's life, of minor importance, and particularly of those occurring at New Orleans, will be reserved for a second volume. At the latter place he was frequently publicly assailed by editors and others who supposed they could make political or financial capital from such *generous* assaults; on one occasion a gentleman from an interior parish, who had recently taken up his residence in the Crescent City, became a candidate for political favor, and in an address to an assembled multitude at St. Mary's market, made what Mr. Barker considered an illiberal reference to him. His speech was published in the Delta of the 12th of October, 1851, and called forth a reply from Mr. Barker, which is given as explanatory of his support of General Taylor for the Presidency, and of his disappointment at the political course of that military chieftain after he was elected President.

The gentleman from the interior was not elected, and thus discovered that he was in error in relation to public opinion.

[To the Editor of the Delta.]

TACIT MORTGAGES AND FREE BANKING.

"Having been referred to by name in a speech made at a public meeting by a candidate, and in the newspapers, in connexion with these questions, which are expected to come before the next legislature, a remark from me may serve to correct error, and be otherwise useful.

"The money referred to was lent on the security of plantations, supposed to be free from incumbrance—so certified by the most able counsel in the State. There having been defalcation in the payments, a foreclosure was sought. In one case a preference was claimed by the heirs of the deceased wife, under the law

establishing tacit mortgages, alleging that the wife of the debtor had died twenty years before the money was borrowed, and that her share of the community interest had not been settled. This claim, after fifteen years troublesome and expensive litigation, was defeated by my being enabled to establish the insolvency of the community at the death of the wife, and the whole debt was collected, amounting to sixty-eight thousand dollars. This, the orator, or his publisher, calls 'indifferent success.' The difficulty of persons at a distance establishing the insolvency of parties residing here, after a lapse of thirty or forty years, is so great that no prudent man will lend his money on mortgages liable to such an impediment.

"Again, had the community been solvent at the death of the wife, the debt would have been lost to the extent of her interest in the community.

"There is another fatal objection to mortgage security in Louisiana, viz: allowing syndics and executors to cancel mortgages without first paying the debt professed to be secured by such mortgage; whenever it becomes necessary to settle an estate, the residue interest of the deceased or insolvent only should be sold by the syndic or executor—in other words, should be sold subject to the mortgages, leaving them inviolate.

"Several of my clients have suffered severely from the practice sanctioned by our courts in relation thereto—I do not say by the operation of the law, for I think the law susceptible of a different construction.

"In one case the executor cancelled the mortgage, sold the property, and applied \$1,500 to the payment of one counsel, and claimed \$700 for another, for services in settling the estate, and a large amount for other expenses, there being no other available property, leaving a very small balance for the mortgage creditor. Had the avails been less than these large fees and other expenses, the whole claim I represented would have been lost.

"These impediments cost Louisiana millions every year, in commissions for acceptances, and exorbitant interest, besides the inconvenience arising from not being enabled to borrow on mortgage security; and so long as they are permitted to last, it would be idle to attempt to borrow money in other States, or in foreign countries, on Louisiana mortgage security, although money there is abundant on satisfactory security, at an interest of three or four per cent. per annum. Could money be borrowed on such terms in Europe, and brought here, there would not be any lack of capital wherewith to construct railroads, and to promote all useful improvements; in fact, every department of trade would feel the beneficial effect of such an expansion of active specie means—the mechanic, the laborer, the merchant, and the tenant, as well as the owner of real estate.

"As to free banking, it is now as free as air,

with the exception of the oppressive tax imposed on those who conduct that business. What those who ask for a law on the subject want is an exemption from liability for their banking operations beyond the amount they think proper to embark, which law our constitution prohibits the legislature from enacting,—this they call free banking. I could not object to such a law if constitutional, although content to remain liable to the extent of all my operations, banking, equally with all my other transactions in life.

“One word more for myself. I do not think it was wise, politic, or in good taste, to mix the name or business of any individual, not a candidate, with these discussions. They should be general, not personal.

“I have been in active business here for more than seventeen years; came here with my family, my ships, my merchandise, my servants, my furniture, and other appendages of life, intending to make it the place of my permanent residence, and expend my earnings among those from whom I should derive them; have passed fifteen summers here—the buildings erected on Gravier street, the vessels dispatched, and other business transacted by me, evidence the number of persons who have found employment from my enterprise. I am known to the whole community, every member is at liberty to deal with me or not, as he may think proper. If an active demonstration before their eyes for seventeen years is not enough, human life will be too short for them to acquire the necessary information.

“I am not a candidate for professional employment, nor have I been for a long period; the time wasted in hanging about the courts, waiting for a cause to come on, is distasteful to me, and at my time of life I cannot afford such an encroachment on my enjoyments.

“Why these men continue to dwell upon the support I gave to the nomination of General Taylor, I do not know; the Democratic party should be satisfied therewith; they know full well that I was as much disappointed in the course pursued by General Taylor in the selection of his cabinet and the other appointments to office as any man in the nation, and sincerely wished it had been otherwise; yet they were minor considerations to the great questions which led to his nomination. The Whigs had obtained a majority in Congress—were opposed to the further prosecution of the Mexican war—there was no other way to counteract their measures than to select *for them* a President in favor of the vigorous prosecution of that war; and after the war had been gloriously terminated, mainly by the bravery and skill of that great military captain, no friend of mine could wish me to have broken faith pledged in favor of that nomination, or to have abandoned the hero of that war; to honor him with the Presidency was to give eclat to the daring deeds of our soldiers and renown to our army; the work has been accomplished, every American heart is reveling in the splendor of the position acquired, and every Democratic friend of General Taylor is found in the Jeffersonian ranks.”

JACOB BARKER.

LIFE OF JACOB BARKER.

Doctor Benjamin Franklin and Jacob Barker both descended from John Folger and Meribah Gibbs; Peter, their only child, was born at Norwich, in England, in 1618, and died at Nantucket in 1690, and his wife in 1704; they came to America in 1636, settled on Martha's Vineyard in 1659; he visited Nantucket in the first boat that went there; accompanied Christman Coffin as interpreter for the Indians, by whom the island was inhabited; in 1644 he married with Mary Morell; they had nine children, two sons and seven daughters, of whom Abiah was one; she was born in Nantucket in 1667.

Abiah was the mother of Doctor Benjamin Franklin; she married with Josiah Franklin, of Boston, where Doctor Franklin was born on the 6th of January, O. S., 1706; he died at Philadelphia, April 17, O. S., 1790.

John Folger, jr., was another of the nine children of Peter Folger, born in 1659, and died in 1732; he married with Mary Barnard, daughter of Nathaniel; she was born February 24, 1657; died in 1736. They also had nine children, of whom Bethiah was one; she married in 1692 with Samuel Barker, the grandfather of Jacob Barker; Samuel was the son of Isaac Barker, of Duxbury, England. Samuel was born September 2, O. S., 1667, and died February 1, 1739.

Eleazer Folger was also another of the aforesaid nine children of Peter; he was born in 1648, and died 1716, leaving five children, of whom Nathan was one, born 1678, died July 2, 1747; he married with Sarah Church, daughter of Benjamin; they left nine children; Abisha was one, born in 1700; he married with Sarah, daughter of Payne Mahew; she died, leaving four children; he married again with Dinah Starbuck, widow of Benjamin, born May 23, 1713, died in Hudson, September 1, 1793, leaving seven children, of whom Sarah, the mother of Jacob Barker, was one. She was born at Nantucket, October 16, 1739; she married with

Hezekiah Gardner; he died, leaving one child, Gideon Gardner; she again married with Robert Barker; he was born at Wood's Hole, Massachusetts, February 12, O. S., 1723.

The resemblance between the portrait of Dr. Franklin and that of Jacob Barker is very great.

Jacob's father married and settled at Nantucket in early life, removed with his family from Nantucket at the commencement of the revolution, in 1772, to Swan Island, Kennebec, then the province and now the State of Maine, where his father died on the 26th of April, 1780.

Jacob was born there on the 17th December, 1779, (the hard winter.)

Peace was concluded in 1783.

His mother was an exemplary member and elder of the Quaker church; Jacob's father not being a member, their children were not born members; after the death of her husband she associated them with that excellent religious society, and returned with her family to her native island in April, 1785, where she died in 1833, in the 94th year of her age.

Jacob resided there until he reached the age of sixteen; he then entered the school of William Sawyer Wall, in July, 1796, at New Bedford which he attended until May, 1797, when learning of the death of his brother Isaac, at the Havana, of the yellow fever, he returned to his mother, and for a few months attended the store of John Elkins at Nantucket; his prospects there being unpromising, and he, like most island boys, having a disposition for a sailor's life, determined to seek fortune and fame on the ocean; for this purpose he shipped as a green hand on board a packet commanded by Wilson Rawson, bound for New York, with the privilege of taking his discharge at that place, his intention being to get a berth on a ship bound for the East Indies. At this time he had one hundred dollars *in money*, and his absent adventures yielded another hundred dollars; those to Russia were

the most profitable, from thence he imported feather beds and diapers.

At New York he was met by his brother Abraham, then a partner in the respectable firm of William Rotch, jr., & Co., of New Bedford, who induced him to restrain his roving disposition and enter the counting room of Isaac Hicks, an extensive commission merchant at New York.

Abraham Barker died at Philadelphia, of yellow fever, in 1819.

With Mr. Hicks Mr. Barker remained until 1800, when he formed a connexion with John Bard, an insurance broker, and Jonas Minturn, as commission merchants. Their connexion was but of short duration.

Mr. Barker continued to reside in New York until 1834, when he removed to New Orleans, where he continues to reside, blessed with the preservation of his physical and mental faculties to a greater degree than is usually accorded to persons of his age.

The family of Mr. Barker being of Nantucket, he claims to be of that place, although not born there.

On a recent visit to that island, it was his intention to have essayed an article in relation to its history, the pursuits of its inhabitants, and its society, and to have portrayed the fascinations of its lovely women; but that pleasant task has been so ably and so truthfully performed by the Rev. H. W. Giles, that he prefers to have the doctor's articles republished from the *Weekly Mirror*, a newspaper published at Nantucket, by Messrs. Hussey and Robinson:

"By the politeness of Mr. E. G. Kelley, we have been furnished with a copy of the *Augusta Age*, from which we cheerfully copy the following *poetical* letter, from Rev. Henry W. Giles, written in his own peculiarly rich, lively and elegant style. Those who have ever been favored by hearing him speak, will thank us for affording them an opportunity to read his views of our island. Mr. G. has an enviable reputation, both as a speaker and writer:

NANTUCKET.

"As we have been recently enjoying a sojourn in Nantucket, we hope that a few notes on that famous island may have interest for our readers. The historical facts we give on the authority of Obed Macy, whose history of the island, published in 1835, is before us while we write.

"Nantucket was discovered in 1602, by an Englishman, Captain Bartholomew Gosnold. In 1641 Thomas Mahew and his son obtained a

deed of the island from James Forrett, agent of William, Earl of Sterling. A title was not obtained from the Indians—the native owners—until 1659. This, as yet, was but by verbal agreement. Mahew gave up his title to certain associates, for thirty pounds and two beaver hats—one for himself and one for his wife—which intended disposition of the hats is carefully noted in the deed of sale. The pound, we think, must have been nearer to the Scotch pound of twenty pence, than to the English pound of twenty shillings. A full title in a written document was obtained from the Indians in 1664.

"The island is situated 30 miles south of the continent, and nearly 60 miles southeast of New Bedford; north latitude $41^{\circ} 15' 22''$; west longitude $70^{\circ} 7' 55''$. It is 14 miles long, east and west, $3\frac{1}{2}$ broad on an average, north and south, and contains 30,000 acres in area. It is almost in the shape of a crescent, and has the town of Nantucket nearly in the middle point of the hollow. The entrance to the harbor is obstructed by a bar. The soil is generally sandy, but it is green down to the strand, and is capable of excellent agriculture. The farms which are on it yield good crops; and vegetables, especially, are both large sized and abundant. Wild grapes are there in plenty, and the cultivated *Isabella* grape grows there well. Numbers of farms are enclosed, and have a thriving and most comfortable appearance. Thousands of sheep formerly spread over the island, but as they destroyed all timber in the bud, and were otherwise inconvenient, they are no longer permitted to run at large. There is now hopes that woods will again, as they did in times past, give shade and beauty to the land. But, though the surface wants shade, it does not want beauty. It is partly level and partly undulating, and rich with verdure and wild flowers. It put us very much in mind of the western prairies, so far as its limited extent could remind us of such boundless spaces. We were not aware, before being in Nantucket, what a splendid flower the thistle could be. It is here in extraordinary variety, and with glories of hue that shower brilliancy on the fields. Swamps, too, there are, that are full of blossomed shrubs, sparkling to the sun and fragrant in the air. Will the mention of utility blunt the sense of beauty, when we say that these swamps serve for use as well as ornament, and yield peat, which does capitably for fuel. The smell of it burning was to us, we confess, like the sound of a song—like music sad and far away—for it wrapt us in the dream of our early days, it brought us back the vision of our native Erin, with her bogs and her heaths; we looked across the ocean in that direction, where the wave on the other side was kissing her shore, and we said in our heart, when we forget thee, oh, thou loved one, let our right hand forget her cunning, and when we shall speak thee ill, let our tongue cleave to the roof of our mouth.

"Nantucket, it is thought, will, in course of time, be washed away. It is as a napkin, with which Old Ocean is constantly wiping his mouth, it lessens with every dash of foam which he clears away from his beard, until, at last, there will not be two threads of it together.

"Thomas Macy was the first settler. He was from Wiltshire, in England, whence he came in 1640, and acquired a good estate of 1,100 acres in Salisbury, Massachusetts. But on a certain desolate rainy morning, when he was not in his house, and when his wife was sick abed, four way-worn Quakers took refuge under his roof, from the inclemency of the storm. It was penal at the time to harbor Quakers. Macy was persecuted, and was obliged to flee his home. He took to the sea in an open boat; in this lonely island he found security, and among the Indians he met with humanity. What an historic picture we have here, in this Christian victim taking to the waves from stern Puritans—trusting to the mercy of the elements and to the generosity of the man of nature, to save him from the cruelty of the man of grace. His petition to the court to spare him, with its bald simplicity and its bad English, is a most pathetic thing to read. A number of persons joined him afterwards from the town of Salisbury. The island was divided into twenty-seven shares, and this is the division which still continues in the proprietary of the soil. The number of inhabitants soon became large enough to form quite a community; as they were industrious, they formed a prosperous community; as they were honest and virtuous, they formed a peaceful community. The members of the little commonwealth consisted of farmers, fishers and mechanics. 'The first mill of which we have any record,' the historian gravely tells us, 'was one built in 1666, for grinding corn.' But, with honest particularity, the worthy annalist informs us that the town had voted 'during the previous year, to have a mill to grind grain, which was to go by horse power.' Why this vote was not carried he does not know, and so it remains with many other events among the secrets of history. A mill, however, was erected, which was to go by water, and such a mill, we take it for granted, could grind both grain and corn. It was given to the charge of Peter Folger, and Peter Folger, it appears, was a person of many talents. He was 'to officiate as miller, weaver and interpreter.' His son Eleazer was to act as shoemaker. Besides being miller, weaver and interpreter, Peter Folger 'acted also as surveyor of land.'

"The whale fishery, which has been since the leading business of Nantucket, began very early. The first whales were captured near the shores. They came and were killed. Even still they have a sly liking to old Nantucket, and occasionally a stray whale comes near to it to give a puff and to take a peep—it may be, some venerable fish of other days. But those who make merchandise of oil care no more for a

whale of sentiment than for the most unpoetic whale that swims, and so the romantic rover gets harpooned in spite of his tender imagination. He is most prosaically cut up, vulgarly boiled, transmuted into fluid, and the only remark which his unfortunate memory occasions is as to how many barrels of oil he produced. This might be thought in the way of nature, but sometimes he is subjected to base indignities. While we were lately in Nantucket, a whale paid a visit to the place. He came, we supposed, to flounder for a while in the waters of his ancestors, but he paid dearly for his domestic affections in the loss of his life. He was tugged into the harbor; then, instead of being honorably cut up and boiled, he was first exhibited at so many cents a head. A friend remarked to us that 'it was too bad, it was really not right to have the great animal of the ocean thus BARNUMIZED. He will make sixty barrels, and could not that suffice?' We were not so shocked, we told our friend, because we once heard of a man who exhibited his grandmother, or all that remained of her. Her body was found petrified in a cemetery. It was a curiosity, popular as well as scientific. Her grandson thought he might as well turn a penny on her, and charged twenty-five cents to each person who wished to take a sight. It is not easy always to say what is property, and still less easy to say what are the rights of property, and we leave it to those learned in the law to determine whether a man has most real ownership in the corpse of a dead grandmother or in the carcase of a captured whale, and whether, when exhibiting them for a fee, one has not as much right as the other to do what he likes with his own, be it a slaughtered whale or a petrified grandmother.

"The whale fishery, once established, had remunerative success. When whales became scarce in the neighboring ocean, the adventurers extended their researches. The Indians lived amicably with the whites, and joined with them in this bold as well as gainful sport. Vessel was added to vessel, until fleets peopled the southern ocean, and the trade employed in its service a great navy of its own. 'It is remarkable,' observes Mr. Macy, 'that notwithstanding the people had to learn the business of whaling, and to carry it on under many hazardous circumstances, yet not a single white person was killed or drowned in the pursuit in the course of seventy years preceding 1760.' The business advanced, and it was found of such value in all its departments, from the catching of the whale to the wick of the candle or the lamp which burned him, that besides New Bedford and Cape Cod, many other portions of New England became interested in it, and invested no little in it of their industry and their capital. It appears that this great business, of which Nantucket was the parent, has of late years made New Bedford its centre, and that though oil is still manufactured in Nantucket, the largest

portion of the shipping is owned in New Bedford.

"Nantucket suffered much privation during the revolutionary war. The prevailing religion of that place since 1704 had been that of the Society of Friends. The inhabitants on this account were in conscience pledged against war, and so they became exposed to the enemy without having the sympathy of their countrymen. Their industry was paralyzed, their property was seized, their persons were imprisoned. They remonstrated with English officials, they even petitioned English commanders; and if they met with individual leniency or occasional generosity, the usual treatment which they received was that of harshness. The inhabitants suffered severely also in the war of 1812. Besides the loss to their commerce, they were at one time so shut up, so surrounded by cruisers of England, so unprotected by their own nation, that they were in danger of being reduced to a state of famine. The British Admiral, Cochrane, in granting them permission to obtain supplies of food and fuel, wrenched concessions from their necessities which brought them to the verge of treason, namely, that they should refuse to pay the direct taxes of the general government. After the peace, Nantucket made good its losses, but in the decline of its general staple, and by emigration to California, it is again upon the wane. It suffered a few years ago from a destructive fire; it is always liable to vicissitudes at sea, not by shipwrecks alone, but also by unprofitable voyages; much of loss in both ways it frequently endures. Still it keeps its ground. It maintains a population of 8,000. Some of its people are rich; most of them are in comfort; none of them are allowed to want. It has excellent institutions, intellectual, religious and benevolent. It has its share of poverty, but is without crime. Its poor-house is well cared for, and there is no prisoner in its jail. The office of jailor has the dignity of being a sinecure. It has its poetry, too, and very exciting poetry it is—not poetry in verse, but in narratives of shipwreck and terror, fearful traditions of storms and human struggle, accounts of lonely seas and of sailors' dreams therein, with many an actual marvel, with strange curiosities of imagination and of fact. We can think of no place where, more than in Nantucket, there is the wild story and the charmed tale to make the lights burn blue, and the listeners group around the fire, while the winter wind blows through the starless night, and the surge of the groaning Atlantic joins in its chorus. And lastly, Nantucket has a watering place, a retreat by the sea from its broad, heated spaces, where the weary that travel over them can find rest, coolness—a retreat where those who are suffocated in the crowds, bewildered with the noise and satiated with the luxury of its metropolis, can put off all the cares of fashion, and enjoy the simplicity of nature. But seriously, Siasconset is a charm-

ing little nook, with its birds'-nest cottages hugged in the embrace of the wave in which to cool the brow, tranquilize the heart, and forget the vexations of the world. If one cannot have the poetry of a cottage, Mrs. P., in an excellent hotel, will give him the comfort of a home, and he who has been nearly blackened to a cinder in the baking of a city, will in a few evenings here find himself cooled and moistened to the life and temperature of a man.

"We have some personal impressions of Nantucket to record, but as our space is now exhausted, we defer them to another time."

NANTUCKET.

BY REV. HENRY W. GILES.

"Before giving our personal impressions of Nantucket, we have some remarks to make upon its staple business. This, as every one knows, is connected with the whale. We might here, if we wished merely to fill space, go into a disquisition on the great animal of the ocean, describe their forms, trace them to their haunts, and dwell minutely on their habits; but our readers will find such information, if any of them should need it, in a child's book of natural history. We have now to do with a whale simply as a source of business, and that in the briefest manner. A species called the 'Right Whale,' used to be found in the Gulf of St. Lawrence, about the year 1761. A whale of this species frequently yielded from 100 to 230 barrels of oil, with from 2,500 to 3,200 pounds of bone, which sold for more than a dollar a pound. But the sperm whale is of the most worth, and until of late it was the only one which the adventurers cared to capture. A sperm whale 60 feet long, 24 feet around the largest part of the body, will produce, according to Nantucket estimate, 60 barrels of oil, and Nantucket ought to know.

"To show at what cost this trade is carried on, we will state, in the most condensed manner, a few items of its expense. There is, first, the expense of *capital*. 'A fair average price of a ship,' says Mr. Macy, 'ready for the reception of her appropriate stores for a three years' voyage, is about \$22,000, and the outfit about \$18,000 more. Some have sailed at a much higher price, near \$60,000.' This the owners furnish. The captain and crew are paid by shares of the whole, according to a certain scale. The scale varies, we suppose, with circumstances, but it is so adjusted that the risk may be as fair as can be, between capital on one side, and life and labor on the other. Life and labor constitute the second item of expense. They make no light one. Life is endangered in whaling as it is in all navigation, but besides the ordinary chances of the sea, it has fatalities which are peculiar to itself. The whale occasionally shows fight, turns on its heels, and

whirls them to destruction; or, sometimes, with too short a line, dives and drags them into the fathomless abyss. Instances occur when a ship is lost by striking against a whale. In 1807, the ship *Union*, Captain Edmund Gardner, sailing at the rate of seven knots an hour, struck on a whale. The captain and crew had merely time to provision and launch their boats, and in less than an hour the ship went down. After rowing and sailing for seven days and eight nights—the latter part of the time without food or water, having in a tempest been obliged to lighten the boats—they gained an island of the Azores, and obtained assistance. But a whale will also attack a ship. A case of this kind happened to Captain Pollard, of the ship *Essex*, of Nantucket, in 1820. While he and most of his men were in pursuit of a school of whales, a single whale with two blows destroyed his vessel. When he and his party returned, they and those who had been with the ship, found themselves on the desolate ocean, robbed of their only refuge. They furnished their boats as best they could from the wreck, and set out to reach the nearest land, which was separated from them by 1,000 miles. After enduring incredible hardships for twenty-eight days, they arrived at Ducie's Island. They procured water there, but could get no food. They once more embarked, steering for Easter Island, but missed it. Now they aimed for Juan Fernandez, which was about 2,500 miles E. S. E. from them. They left Ducie's Island on the 27th of December, and there were then three boats, each respectively commanded by the captain, the mate, and the second mate. On the 10th of January the second mate died, and on the 12th the mate's boat parted from the others. On the 17th of February the mate and such of his companions as were alive were picked up by Captain Grozier, of the brig *Indian*, from London. The captain and a single survivor were rescued on the 23d of February, by Captain Zimri Coffin, in the ship *Dauphin*, of Nantucket. The second mate's boat was never heard of. Captain Pollard had the misfortune to be afterwards totally wrecked on a coral reef, which is another source of risk in this navigation, all the more fearful that it is at once terrible and unseen. Here are cases that surpass for suffering and struggle the noted stories of Bligh and Byron, yet they are but instances out of numbers equally awful which are on record. 'The whole number of vessels lost, exclusive of captures,' Mr. Macy says, writing in 1835, 'since the settlement of the island, is 168; the loss of lives 414.' The other part of this second item, labor, is very great. We know that a sailor's work, under any circumstances, is severe as well as dangerous. The toil is such as most men would shrink from, and it is constant. It has few mitigations while it lasts. The sailor's food is coarse, his sleep scanty and uncertain; and while engaged in long and toper employment, he is under

despotic command—often under fierce and capricious tyranny. But the ordinary merchant sailor has constant changes in his life and limited intervals in his engagements. He knows exactly the point to which he goes, and he goes to it in the shortest way. He sees many countries and cities, many varieties of civilization and people; his service is brief, and his remuneration is fixed. The whaleman has all that is worst in this lot; but his servitude is not for weeks or months—it is for years. His toil is hazardous; he pursues it on the wild and lonely seas, and if he gets a respite upon land it is commonly among savages, or only in the desert. His pay, too, is uncertain; it depends on his success, and the man who works the hardest has the lowest share. We have not, however, stated yet the item which should count for most—that is, not the loss of comfort, not the loss of ease, not the loss of luxury, but the loss of home. In this the common man and the captain are alike. Both are wanderers and pilgrims upon the deep. The sky bounded waste of waves is their great domain, and the ship their only domicile. Their households they see but with glimpses at distant intervals, and wife and child they clasp only to feel that life is only separation. The voyages have been growing longer as whales have become scarcer. The ordinary voyages used to be three years—it is now, on the whole, five years; so that in a quarter of a century a man may interrupt by six or seven hasty visits his strangeness towards his family. Yet it is for them he thus makes himself a stranger; for them he becomes the long exile of the homeless seas. There was more pathos than we have read in poems in a few unaffected words which we heard a young man say to another on board the steamboat, on our way to Nantucket. 'I have been at sea,' said he, 'since I was sixteen, and I have not since, all put together, been three months on land.' His age was probably six and twenty.

"We have been led into these general observations farther than we intended; so far, indeed, as to leave us but small room for matters personal. It is as well.

"Nantucket has a pleasing appearance from the entrance of the harbor. We expected merely to see a few straggling houses along the shore, but were pleasantly surprised to behold a town rising above the water with a sort of steepled stateliness. As we entered the principal business street we were struck with the names over the stores. We read at every point, MACY, COFFIN, SWAIN, BARNARD, STARBUCK, &c. When we came to know more of the place, we found that these too were names among the first settlers; thus we learned how constant their descendants have been to the soil of their fathers. Here is one spot, at least, from which Americans have not been given to change. Another circumstance attracted our notice, which spoke favorably for the people—that was, everywhere I saw abundance of flowers. The

greatest quantity and the finest of roses we have ever seen, out of the south, we saw in Nantucket. One house with which we were for the time associated was literally clad and covered with them. Wherever there is a love of flowers there must linger yet something of the soul of childhood; there must be there a gentle and a humanizing influence. We are inclined to ascribe this taste for flowers in Nantucket to the predominance of womanhood in it. Women form the majority of its permanent residents, and left free to indulge their own likings, we do not wonder at the show of flowers. As we can mark the dwelling in which the higher womanly tastes prevail, where refined womanly cultivation rules, so we may likewise mark a locality. By-the-by, this predominance of women in Nantucket is everywhere visibly observable—in the streets, at parties, at concerts, at lectures, and at church. They seemed to us cheerful, healthy—handsome we need not add, for that will be taken for granted. Upon the whole, we did not observe that their loneliness wore much on them. They did not appear despondent or woe-begone, and bore, we fancied, their state of separation with praiseworthy patience. We have read in tales of chivalry of crusading barons who returned home expecting to find their ladies clad in the sorrow of absent wives, and found them dazzling in the ornaments of expectant brides. It would not be so with our knightly whalemen, but in general, we think, they would find their wives in good health and spirits, bright, blooming, and glad to meet them. None but puling sentimentalists would wish it otherwise. And, possibly, women are not so dependent for happiness on the lords of creation as these same lords would fain believe. As far as we could judge, Nantucket stands high for female education and intelligence. It has most excellent schools for both sexes, as well public as private. Besides opportunities of instruction, there is that in the circumstances of the place which tends to give the female mind a wider scope than it has elsewhere. Women in other places have those who are bound to them in deepest and dearest interest in their home and neighborhood. Here the opposite is the case; those in whom they are most concerned are remote from them, and in many places, so that hardly a woman but has correspondence far and wide with lover, brother, husband, child. Thus circumscription of space leads to enlargement of ideas. Boys next to women abound, or seem to abound, in Nantucket. This *seeming*, we suppose, arises from the absence of men. Visitors, we were told, had complained as to the conduct of these boys. It would not be strange if, without the presence and control of fathers, they were a little wild; but for our part we never met in any place more courteous youth, more gentlemanly in manners and behavior; and this we ascribed partly to the influence of mothers and partly to the excellence

of the schools. Nantucket is wisely generous in the support of schools, and in addition to those which are supplied by the public fund, another is maintained by a donation from Admiral Coffin. A beautiful building is just ready for this school, and shortly it will be in operation under the very best of teaching. We had only opportunity to visit two of the schools. It was our loss. One was the high school, under the admirable talent of Mr. Morse, and the other a grammar school, conducted with felicitous ability by Mr. Bunker. In the high school a class was examined in astronomy; in the grammar school a class recited in anatomy, and our surprise was equal to our delight in seeing how these young minds traced, with a sure intelligence, with a clear knowledge of the subjects in each science, complicated diagrams of the heavens and the human body. Nor is it in schools alone that Nantucket is liberal for intellectual provision. It has two newspapers. A good news-room is there, with all the leading journals of the country. Religion has competent support, and its services are numerous attended. The Athenæum Library consists of some thousands of volumes, which are lodged in a handsome building. This building has a good public hall, which is every winter supplied with a series of lectures, and filled with an intelligent audience. We know not if Nantucket has done aught for literature, but she has done her share for science. She claims William Mitchell, eminent in astronomy, and his daughter Maria, who has not only contributed to the scientific fame of the nation, but takes her place among the thinking women of the world.

"We return once more to that pleasant little nook, Siasconset. We wished we could have staid some time in it, but we could not. We regretted this, but there was no help for it. The people there, in their village as well as in their metropolis, were agreeable, kind and hospitable, but we had no time for play or pleasure. One part of a day we gave up the life within us to the glory that was around us. The walk is fine on the green sod above the ocean. We paced along it with the large joy which feeling of heaven and of the sea gives to the heart. The waves beat below us, and sang their great song along the shore and up into the mighty temple of the gorgeous day. We walked on to Saneota Head, ascended the lighthouse under the guidance of a bronzed and veteran sailor, Captain Bunker, was interested in the exquisite machinery, was interested in the brave and truthful man who is genius of the lamp to protect his brethren among the billows, but turned away at last from all, and looked with rapture round upon the majesty of nature. A theorist may tell us this is want of *mind*. We care not what the theorist tells us; if it is so we are willing to want *mind*, for the rawest things in the simple works of God give us more spiritual, more thoughtful excitement than the ripest things in the works of man. We got back to

the village and found new gladness in the walk. Long may you live, Nantucket, and may your borders never be less. If Old Ocean does wipe you away, we hope it will not be in our time. We trust you will be spared many a century to your sailor sons and to their children, and that exultant and revengeful whales will never have the malicious pleasure of spouting in your vacant place. If our wish could have effect, you would last as long as the waves around you, and as the sky above you."

Mr. Barker's disposition for commercial pursuits manifested itself at a very early period; he had supposed his first essay was three tobacco boxes. In this he was probably mistaken.

When last on the island, Captain Stephen West, his senior by four years, in his youth also in the service of James Barker, employed on his packet trading to Boston, informed him that he had sent a small sum of money by him at an earlier period, as an adventure to Boston, to purchase something for the Nantucket market.

On the return of the packet he met him at the wharf, and being told that he had invested his money, and would hand him the merchandise as soon as the sails were furled, whereupon he accompanied him out on the bowsprit shrouds and aided him in handing the jib.

The history of the tobacco boxes was this: Mr. Barker was, as a relaxation from the fatigues of attending store and other matters for his brother James, permitted to go as cabin boy in his packet to New York and Boston two or three times a year.

On one occasion the passengers presented him with 31½ cents. This he invested at Boston in three iron tobacco boxes, and took them to Nantucket, where he sold two of them for a penny apiece profit; the other got a little rusty, and was sold at first cost.

When at Nantucket, forty years thereafter, he met a poor old man hobbling along with the aid of a staff, who abruptly observed, "Jacob, will you take a piece of tobacco?" at the same time presenting the box. Jacob replied, "no, I thank you, I do not use tobacco in that way," when the old man said, "do you know that box?" This brought its sale to the recollection of Jacob, who seizing his hand, said, "is this you, Mr. Ellis? how do you do? I am glad to see you looking so well after so long a period."

Mr. Barker continued to indulge his disposition for traffic until he left the island.

On one occasion he accompanied his brother James in a vessel loaded with fish, oil, and sperm candles, intending to pass the winter at Troy, New York. The passage being long, the navigation of the Hudson became impeded by ice, the vessel could not proceed above Poughkeepsie, where she wintered.

The crew, with the exception of Mr. Barker, were discharged, and Captain Barker went to Saratoga to pass the winter with his family, who were on a visit to the father of his wife, William Coffin, residing at Easton.

Jacob, although very young, was entrusted with the disposal of the cargo, which he bartered with the country people for pork, lard, wheat, corn, rye, and flax, generally brought to that market during the winter in sleighs. He wound up the whole concern to the satisfaction of his brother James.

Jacob had one barrel of fish on his own account, which he sold, and trafficked a little in other things, returning to Nantucket with a capital of eight dollars.

Subsequently he addressed a letter to his brother Gideon Gardner, residing at Hudson. This letter, through the instrumentality of the executor, found its way into the newspapers, after the death of Mr. Gardner. It stated that the writer wished to go to sea, learn a trade, or go to school. The orthography of the letter justified the latter wish.

His brother Abraham arranged for him to enter the family of Professor Wall, at New Bedford, and attend his school.

He left the island in the mail packet Maria, commanded by Silas Parker, and had for his fellow passengers the family of Samuel Rodman, who left the island to take up their abode at New Bedford. The weather was very fine, with a gentle southwest wind; after passing the lone rock of Wood's Hole, where the tide runs with remarkable swiftness, and the navigation very dangerous, Captain Parker observed to Mr. Rodman that there was another lone rock in the bay which he could point out. Mr. Rodman replied, "do so, I should like to see it; I did not know of its existence." The helm was put down, the vessel luffed up two or three points, and in fifteen or twenty minutes she struck the rock with such violence that it was very difficult for those on deck to maintain their erect position, when Captain Parker very

coolly observed, "there it is, Samuel." "Yes," says Samuel, "I perceive." The vessel slid off, and reached the port of her destination in safety.

Mr. Rodman's residence at New Bedford materially contributed to the great prosperity which has crowned the labors of its enterprising inhabitants.

The professor passed most of his evenings in the room of Mr. Barker. On one occasion he inquired of Mr. Barker how he liked the young ladies of the place. "Very well," was the reply, "but not so well as those of Nantucket." "Wait a little," rejoined the professor, "you have not yet seen the rose of my garden, Miss Elizabeth Hazard; she has been absent from school many months, on a visit to her relations in Naragansett." This young lady returned, when the high commendation of the professor was apparent.

Young Barker lost no opportunity of ingratiating himself with her. After his return to Nantucket the said mail packet Maria became an object of deep interest to him. He watched her arrival with deep solicitude, and the signals, blue, red, and white, streaming horizontally from her mast-head, enabled those watchful eyes to distinguish her approach at a great distance.

This three colored piece of bunting made so deep an impression on Mr. Barker that he adopted it for the signal to be worn by his ships in after life.

When he left New York other merchants applied for it. Mr. Barker replied, "it has proudly waved over my ships in every clime; I cannot consent for it to designate those owned by others."

Samuel Hicks, a senior clerk with his brother, reached his majority before Mr. Barker, and embarked in the commission business with Henry Post, under the firm of Hicks and Post.

Through them young Barker sent to foreign places many adventures, became interested in three ships and one brig, kept an account with the United States branch bank, obtained an accommodation from it, which was renewed from time to time, until he was of age, after which Isaac Hicks joked the directors about discounting the notes of boys. When the note came round it was thrown out, with the remark that the bank could not discount the notes of minors. It was informed that Mr. Barker was

no longer a minor, when the note was again discounted.

At New York, while waiting for his brother Abraham to procure for him a situation in a commercial establishment, he visited the museum kept by Gardner Baker, at the foot of Broad street, where he was much pleased with a beautiful boy with blue eyes, rosy cheeks and fine long flaxen hair hanging in ringlets, snow-white skin, the son of the proprietor, by the name of James Baker, who made music on the bells for the amusement of visitors; there was a beautiful wax figure of him exhibited in a glass case.

Mr. Barker also attended street auctions and other places of novelty to him. At one of those auctions, regardless of the admonition often heard from his seniors to avoid dealing in old watches and old horses, he was tempted to bid \$20 for a gold watch, it was immediately struck off to him, when he supposed he had been taken in; it proved otherwise; this watch he parted with to profit shortly after entering the counting house of Mr. Hicks, a result not to have been anticipated.

The circumstances of the sale were these: Mr. Barker was sent to Messrs. James and Samuel Watson, an extensive commission house of Front street, by Mr. Hicks, for a note for sperm candles sold them. Those extensive merchants proposed to this small boy a sale of ship bread, saying his fellow clerk, Mr. Samuel Hicks, often purchased the article of them in exchange for liver oil, for which article they frequently had orders from Virginia, with which bread he supplied the ships consigned to Mr. Hicks to profit. Mr. Barker replied that he had not any money wherewith to pay for bread; they proposed to give him credit, a confidence doubtless arising from his being in the employ of Mr. Hicks. He thanked them, saying he dare not incur a debt, a squeamishness which did not last long, adding that he had not any liver oil, nothing but a gold watch which he should like to barter for bread. They asked to see the watch, which being exhibited, and the price named, payable in ship bread, they proposed to have it left and they would decide in the morning, if he would call when he went to the post office for letters, to which he assented, saying "you wish to have it examined by a watch maker. I have had that service performed and know the watch to be good."

He called in the morning, when the Messrs. Watson agreed to keep the watch on the terms proposed.

Here we have a barter trade between merchants of high standing in commercial circles and a green boy from Nantucket.

The next object of Mr. Barker was to find a market for his bread. He was sent by Mr. Hicks to collect a note for codfish sold Thomas Knox, esq., a very amiable, intelligent, and liberal merchant of Wall street.

Inquiry was made of Mr. Knox if he did not wish to purchase some ship bread for stores for the vessel on board which the fish had been sent; the reply was that the stores were all on board, but that he had an order for three hundred barrels of bread for a ship which was undergoing repairs at the ship-yards, which would be wanted in about three weeks, and inquired of the lad at what price he would furnish that quantity. He had but ten barrels; his reply was, that he would go for and bring immediately a sample, with the information required, for which he repaired to the store of Messrs. Watsons. They expressed a great disposition to sell; said it was a consignment from Virginia, had been long on hand, therefore they would sell cheap. A conditional bargain was made, they to take Mr. Knox' note at four months, without Barker's endorsement, if he could not get it at a shorter period.

A sample of the bread was taken to Mr. Knox, the price named on a credit of sixty days; an answer was promised the next morning, for which Barker was punctual to call, when he was informed that John Hyslop, an extensive baker, asked the same price for the same quality of bread, on a credit of ninety days, Mr. Knox remarking "you are a pleasant little fellow, and if you will allow the same credit, I will take the bread of you." This being agreed to, Barker observed that he should like to have a memorandum to that effect. Knox smiled, gave the memorandum of the agreement, taking an order on the Messrs. Watson for the bread; when delivered, a note was drawn for the amount due them, and as a matter of accommodation Mr. Knox paid the money for the balance.

Mr. Barker thus turned his watch into more money than he gave for it, and made \$125 profit on the bread, more than doubling the capi-

tal he brought with him from Nantucket in a very few months after taking up his residence in New York.

When the sickly season came on he had leave of absence, visited Ballston, purchased a horse, on which he travelled to New Bedford, swapped the horse for crude sperm oil with John Alden, a merchant of Fair Haven engaged in the whale fishery, had the oil manufactured and sent to New York, where it yielded double the cost of the horse, which terminated Barker's traffic in old horses and old watches.

Mr. Barker and the other clerks of Mr. Hicks followed up their speculations to such an extent that Mr. Hicks found it expedient to restrict them, allotting to his brother, Samuel Hicks, the traffic in liver oil, and to young Barker the traffic in lime.

Subsequently, as he was ascending the stairs in full view of a lot of soap which had been very long on hand, he remarked, "Jacob, why does thee not sell that soap?" The reply was, "for the want of an applicant. I will purchase it at eight cents if thee will give me four months' credit and allow me to send it as an adventure to the Havana." Mr. Hicks replied in his rapid manner, "take it, take it, I am tired of the sight of it."

It was shipped by a fast schooner, commanded by Daniel Waterman, (a native of Nantucket) about sailing for the Havana at the time when the British were capturing and sending into New Providence all vessels in that trade, depriving the inhabitants of their accustomed supplies. Captain Waterman returned safely in six weeks, bringing back fifty cents per pound in specie for the soap, which was brought to the office, and Jacob was engaged in counting it, when Mr. Hicks came in from breakfast remarked, "what's all this?" The reply was, "money for the soap, and I am now ready to pay for it, although not due for more than two months." Mr. Hicks appeared pleased with the young man's success, and passed on.

During Mr. Barker's minority the whaling business of Nantucket became very much depressed, insomuch that many of the merchants wished to sell their vessels. This being made known by him to Robert Mott,—a gentleman of great merit, he proposed to his friends Robinson and Hartshorn to join him in the purchase of a ship at Nantucket, and to employ

young Barker for the purpose. They offered to be concerned in such a speculation, but refused to entrust a boy with the mission, saying that their Mr. Robinson would go. Mr. Mott declined unless young Barker was employed; they finally compromised by agreeing that both should go. Application was made to Mr. Hicks for permission, to which he consented on condition that he be paid a full commission of two and a half per cent if a purchase was made.

They both went, Barker not appearing to have anything to do with the purchase. Robinson offered \$9,000 for the ship *Portland*; \$10,000 was required. After several days unsuccessful negotiation he determined to offer \$9,500; had a meeting with the owners, of whom an inquiry was made if they were disposed to divide the difference. They replied, "not a dollar less than \$10,000 would be accepted." They separated, Robinson deliberating how far it would be best to yield to the requirements of \$10,000, when young Barker prevailed on him to repair to New Bedford for a few days, leaving him to make the purchase. He did so, and Barker succeeded—purchased the ship for \$9,000 in season to notify Robinson by the first mail when he returned to Nantucket to attend to her dispatch. On arrival at New York she was sold to George M. Woolsey for \$13,500, and young Barker employed to return immediately to Nantucket by James Lyon, of New York, and John James, of Philadelphia, to purchase a ship for them, Jacob Valentine, Samuel Hicks and Samuel Robinson, to purchase another for them. He did so; the ship *Rose* for the former gentlemen, and the ship *Beaver* for the latter, for which service Mr. Hicks also received a full commission of two and a half per cent on the amount of purchase.

In relation to the *Rose*, when that vessel was ready for sea the vendors refused to let her go without an endorser on the bills of exchange to be given in payment, amounting to \$10,000, although it had not been before mentioned; this was very inconvenient. Barker not having the means on the island to give a satisfactory endorser, had to proceed to New Bedford therefor. As there were not any steamboats running, and the mail packet had been detained some days by a northwest wind, a change seemed probable, and in the afternoon of the

day of the occurrence it came round to west-southwest; being rather scant for the mail packet, her captain could not be induced to leave.

Barker, impatient at the delay, took passage on a lumber-loaded vessel that had put in for a harbor, bound to the neighborhood of New Bedford, which he discovered making sail to leave, late in the afternoon. She proceeded twenty-five miles when the wind turned back to northwest, which obliged the vessel to come to anchor at eight o'clock in the evening. At daylight the next morning a signal was set for a pilot; a boat soon appeared from the Vineyard, and was chartered to proceed to New Bedford.

On reaching Wood's Hole found the current running east too swift for the boat to encounter that passage with an unfavorable wind; she therefore beat up the Vineyard sound and passed through Quicksi's Hole, and arrived at New Bedford as the bells, according the custom of the place, were ringing for twelve o'clock.

The endorsement of William Rotch, jr., was procured.

A vessel belonging to Westport, Aikins commander, was chartered to take Mr. Barker back to Nantucket, of which he had to stand pilot, no one on board ever having been through Wood's Hole or at Nantucket. She left at three o'clock with a glorious west-northwest wind and clear weather; at eight o'clock in the evening, the moon shining brightly, she ran in alongside the mail packet lying at the straight wharf, she not having left.

Elated with this exploit, the first thing done by Barker was to repair to the residence of Moses Swain, the captain of the mail packet, to let him know what he might have done if he chose. He could not realize that Mr. Barker had been to New Bedford and returned, until the endorsement of Mr. Rotch was exhibited.

The wind came out that night from the east, the ship *Rose*, commanded by Silas Jones, sailed for New York in company with the mail packet the next morning, and reached New York before the mail packet got back to Nantucket.

Insurances were then made by individual subscription, conformable to the practice at Lloyds, London. A celebrated underwriter was in the habit of insuring Mr. Barker's adventures;

expecting the arrival of a vessel in the cargo of which he was interested, he made a verbal bargain with this gentleman to insure the said adventure.

The next day news came to him through Messrs. Hicks and Post, that some disaster had overtaken the vessel. Wishing evidence of the contract, he wrote a note to the underwriter, requesting him to send the policy, provided it had been filled up; if it had not been not to fill it up until he should see Mr. Barker. It had not been prepared, the underwriter detained the messenger until he filled up the policy, which was done in due form, pursuant to their agreement, and sent by the messenger's return.

This occurrence becoming public, and although of a trifling amount, occurring during Mr. Barker's minority, before he was established in business, amicably settled by the parties who were personal friends ever thereafter, has been a fruitful source of misrepresentation, from the day of its occurrence until the present time.

The result of all Mr. Barker's traffic during his minority was a profit of five thousand dollars over and above the cost of his board, apparel, and other expenses.

He resided in Mr. Hicks' family the last two years of being in his employ, and paid him one half the price for his board he had paid to others. The other half was all the compensation he had for his services.

With this capital he commenced business in 1801. On the 27th of August of that year, he married with his schoolmate, Elizabeth Hazard, the daughter of Thomas Hazard, jr., of New Bedford. She was born at Newport, Rhode Island, on the 2d December, 1783.

Mr. Barker had embarked extensively in the commission business, and was employed by the most respectable merchants of the nation. Among the number was William Gray, of Salem, the owner of more ships than any other merchant in America, who employed him to go to New Bedford and negotiate for a cargo of sugar, which had arrived at that place from Manilla. The sugar was not purchased. He endorsed and sold bills of exchange to a large amount for Henry Deaves, an Irish merchant, who had been an extensive shipper of cotton, tobacco, potash, and breadstuffs, the price of which had suddenly taken an unfavorable turn,

occasioning his bills to be dishonored, which swept from Mr. Barker all he had ever earned, leaving him barely sufficient to pay the debts incurred. This news reached him by letter while he was at his wedding dinner at Nantucket, accompanied by Mr. Deaves, to whom, after perusing the letter, he handed it. He read it, when, at Mr. Barker's invitation, they took wine together. No one else of the party knew what had occurred. They remained friends ever thereafter.

Mr. Barker was enabled to pursue his accustomed occupation successfully. Not satisfied with a large share of commission business, he took an interest in several ships, and as his business prospered, he extended that interest until he became the owner of many vessels, and felt a strong disposition to supply the United States light-house establishment with oil. Those engaged in the whale fishery from Nantucket and New Bedford could not agree to act together in supplying the article, and their competition reduced the price to a very low rate.

Mr. Barker undertook to, and succeeded, in harmonizing their differences, and the oil was supplied by him for their account for one year. The account closed to the satisfaction of all parties.

Mr. Barker supposed those for whom he acted, and who had been greatly benefitted by the arrangement, would be glad to continue his agency. In this he was mistaken. When the proposals were published by the Secretary of the Treasury, not hearing from them, he inquired by letter, expressing his willingness to continue his services, which they declined, intimating that they had the command of nearly all the oil in the country, that no one else could supply it, therefore his services would not be useful; admonishing him to beware how he contracted on his own account, remarking that nothing but the inordinate appetite of youth for gain could induce any one to embark on a sea of such uncertainty.

This did not intimidate. Mr. Barker counted on the arrival of many ships before the oil would be wanted, made proposals on his own account. The eastern association, too confident of their power, required so high a price that their young competitor was enabled to obtain the contract on very favorable terms, not only for that year,

but for the five succeeding years, which he fulfilled to profit and to the entire satisfaction of the government.

He dealt with Mr. Gallatin, the then Secretary of the Treasury, a gentleman of sterling integrity and first rate talents, never afraid to do right or to require of his subalterns to do promptly all that was proper to be done in all matters relating to the business of his department.

Mr. Barker being the owner of many ships, extended his business to many nations, principally to Russia, where the flag of the United States was always treated kindly and liberally, insomuch that he never heard a complaint by an American citizen against that government or its officers.

In the appointment of commanders for his vessels he usually selected those from Nantucket. Among the number from that island were:

Myer Swain, commander of ship Uncle Toby.		
Stephen Parr,	"	"
Andrew Pinkham,	"	President.
Daniel Waterman,	"	Eliza.
David Allen,	"	Betsey.
Peleg Barker,	"	Liberty.
Charles Clark,	"	Albert Gallatin.
Jonathan Smith,	"	Mary.
Josiah Barker,	"	Lady Gallatin.
James Lawrence,	"	Mobile.
Robert Swain,	"	Lady Madison.
Seth Swain,	"	Jason.
Peter Gifford,	"	Olive.
David Jenkins,	"	Loan.
Ichabod Clark,	"	Rodman.
Robert Waterman,	"	Stranger.
Uriah Coffin,	"	"
R. R. Macy,	"	Beaver.
Abisha Swain,	brig	Sarah.
Francis Paddock,	"	President.
Charles Coffin,	"	Clothier.
Jared Gardiner,	"	Hero.
Richard Swain,	"	Wilson.
Hamilton Darling,	"	Catherine Jane.
Peter G. Fosdick,	"	Speedy Peace.
Barzella Jones,	schooner	Galliot.
James Russell,	"	M. Washington.
Bethewel Pinkham,	"	Enterprise.
Samuel Gilston,	"	Alert.
Chas. Coffin,	"	William Tell.
John Cottle,	"	Mt. Wollaston.
Ed. H. Barker,	steamboat	Marco Bozarris

The other officers of his vessels were also usually selected from Nantucket.

During the war Nantucket was in want of supplies; Mr. Barker purchased the New York pilot boat Champlain, and caused her to be loaded at Norfolk with flour, and dispatched for that place, under the command of Bethewel Pinkham. When near the island a heavy fog set in; when it cleared away she was within a half gunshot of a British seventy-four, captured, and vessel and cargo lost.

In 1825 the merchants and banks at Nantucket became much embarrassed in their pecuniary concerns; they sent a committee to New York who, through Barker's aid, procured a loan of \$300,000 on a pledge of oil to be left on the island.

Subsequently he established steamboat communication between that place and New Bedford by placing on that line the Marco Bozarris, under the command of Edward H. Barker.

Had Mr. Barker's affairs prospered as much subsequent to Jefferson's embargo as they did prior to that measure, the business of Nantucket might at this day have been in a more prosperous state, his predilections being in favor of his youthful playmates and their home, which is celebrated for the excellence of their codfish chowder for their evening repast, and green corn puddings at their afternoon tea parties. These exquisite dishes are seldom met with at other places, except among those who have left the island, or their descendants.

However, on one occasion when Mr. Barker was dining with General Jackson at the White House, a first rate green corn pudding was among the good things of which he partook on that occasion, from which he concluded that the Tennessee people had become possessed of the secret how to make the best use of maize.

Colonel Boyd, of Massachusetts, having served in the British army in the East Indies, was rewarded with permission to export from Calcutta a cargo of saltpetre to the United States, to pay for which Mr. Barker's London correspondent furnished the money; a British ship was chartered for the purpose, loaded at Calcutta, and sailed for New York, consigned to Mr. Barker.

On her passage she called at the Cape of Good Hope for refreshments, before which the relations with the United States assumed so

squally an appearance that Great Britain did not like to supply her with such a quantity of saltpetre, and on the pretence that it had been shipped in violation of the rights of the East India Company, the authorities of the Cape of Good Hope seized it and sent the ship off in ballast.

On her arrival below New York being announced, Mr. Barker thought his commission was secure; on her coming up he found he had calculated too fast.

Colonel Boyd was subsequently compensated by the British government, leaving Mr. Barker minus his anticipated commissions. This being in the early part of his commercial career was a great disappointment to him.

Mr. Barker also received from those London friends a consignment for account of Mr. Fulton, of the first steam engine ever in successful operation for propelling vessels. It was made by Messrs. Bolton and Watts, celebrated for constructing steam machinery. It remained in Mr. Barker's store in South street many months before Mr. Fulton could raise the funds to pay for it. The engine was placed on the first steamboat that navigated the Hudson; Mr. Barker thinks her name was the North River, and that she attained the speed of four miles an hour. Little did he then think this discovery of the immortal Fulton would in less than half a century regulate the commerce of the whole world, become so powerful an auxiliary in all war measures, save time and shorten space to such a degree that to be deprived of its use would be universally considered a calamity of the first magnitude.

Very soon after entering the employ of Mr. Hicks, Mr. Barker acquired a thorough knowledge of the art of book-keeping, adopting the plan of full explanation in the original entry, referring to it thereafter by folios, and when goods were purchased or sold for account of parties, or moneys drawn from different banks and delivered among different parties, commencing his entries "Sundry accounts debtor to sundry accounts," debiting each receiver for what he had received, and crediting each bank or owner with their proportion of all that had been parted with all in one entry; and when a parcel of goods belonging to a single concern has been sold to various parties, or money drawn from a bank and divided among several

persons, a single entry of "Sundry accounts debtor to the party," embracing the whole without mingling it with the cash account, unless a portion of the money remained, in which case that account should become one of the sundry accounts for such residue.

If young men wishing to acquire a knowledge of book-keeping would consider well this form of entry, and understand the principle, they would have but little more to do to acquire the whole art, as nothing is more easy than to transfer such entries from the waste to the journal, and from the journal to the ledger.

His plan of calculating interest was to increase the amount of each item of dollars by multiplying them by the number of days, (throwing away the fractions under fifty, adding one dollar to the items where the fractions were over fifty,) leaving a single sum (the balance of debits and credits) on which to calculate the interest for one day, thus having but one item on which to calculate the interest, however long the account might be, in place of calculating it on each item.

Mr. Barker soon acquired so thorough an acquaintance with Mr. Hicks' business, and made himself so useful, that he was entrusted with its principal management, particularly when that gentleman had occasion to be absent from the city. He was successful in having all his transactions approved by his chief.

Mr. Barker's family, Isaac Hicks, from whom he received his mercantile education, and his father-in-law, Thomas Hazard, jr., all being Democratic, it was to have been expected that he would grow up in that faith, and so it turned out, and he took an early part in political matters; before he had a vote his voice was heard and his pen was felt in the good cause.

The odious alien and sedition law fettered the press, and the stamp law of John Adams bothered him in his business; its repeal became an object of deep interest; this urged him on in the support of Jefferson.

In those days party feeling ran very high; the purchase of Louisiana was a theme on which the Federalists rang all their changes; they denounced Jefferson as being under French influence; accused him when the Hornet was sent to Belgium with two millions of specie to pay for Louisiana as paying tribute to Bonaparte; ridiculed the purchase with the ap-

plication of the terms salt mountain, prairie, pig, and such like comparisons. On all occasions Mr. Barker approved of and vindicated this purchase, incurring the keenest enmity of the opponents of the administration, who considered it the great gun by which they were to regain power.

Mr. Barker passed with Mr. Jefferson at the White House the evening of the day on which he sent to Congress the message developing Burr's conspiracy. He appeared much pleased at the failure of the scheme, spoke of the arrival of Erick Bolman, one of the supposed conspirators, a prisoner from New Orleans, at Charleston; the interference of his political opponents to have Bolman released, for which purpose they took out a writ of *habeas corpus*, and sent the sheriff with it, to bring the prisoner into court from Fort Sullivan, where he was confined.

The colonel in command refused to receive the mandate from the sheriff, on the ground that a military officer could only receive orders from his superior, therefore the sheriff must proceed to Washington, and serve the process on the President of the United States, the commander in chief of our whole military force. This subterfuge enabled the colonel to retain the prisoner until he should receive orders from Washington.

The sage of Monticello remarked: "This colonel seems to have been an old soldier, with more respect for military discipline than for civil authorities."

The conversation turned on Blennerhasset, who was supposed to be concerned in the plot,

and those who came among us from foreign countries. Mr. Jefferson said they were a hardy and enterprising race, capable of enduring great fatigue; that we had been and continued to be greatly benefitted by their services; the shorter the period of their probation before they become citizens the better. Exclude them from the blessings of citizenship, and you create a powerful set of men all over the nation, who would act together on the sounding of a single word, who might become very dangerous, when a just and liberal course toward them would have the effect to make them consider us all of one family, embarked in the same ship. They should, said he, be estimated by their virtues and intelligence.

Mr. Jefferson also spoke of the European war, and the injustice of the course of the beligerents towards the United States. Said our merchants had better keep their property at home than to be thus despoiled of it; that the Quaker policy was best, not to have anything to do with those who would not deal justly.

The Democratic party believed that, so far as Great Britain was concerned, the restrictive system would be far more powerful than any war measures we could adopt.

This opinion prevailed among the most enlightened inhabitants of the United States.

Long before the revolution in 1765, they formed a league at Philadelphia, which received the signatures of men of the highest distinction, of every political party, of which Mr. Barker is in possession of an autographical copy, which reads thus

NAMES OF THE MERCHANTS AND OTHER CITIZENS OF PHILADELPHIA,

WHO SUBSCRIBED

TO THE NON-IMPORTATION RESOLUTIONS, OCTOBER 25, 1765.

The merchants and traders of the city of Philadelphia, taking into their consideration the melancholy state of the North American commerce in general, and the distressed situation of the province of Pennsylvania in particular, do unanimously agree: That the many difficulties they now labor under, as a trading people, are owing to the restrictions, prohibitions, and ill-advised regulations made in several acts of the Parliament of Great Britain, lately passed to regulate the colonies, which have limited the exportation of some part of our country produce, increased the cost and expense of many articles of our importation and cut off from us all means of supplying ourselves with specie enough even to pay the duties imposed on us, much less to serve as a medium of our trade. That this province is heavily in debt to Great Britain, for the manufactures and other importations from thence, which the produce of our lands have been found unequal to pay for, when a free exportation of it to the best markets was allowed of and such trades open as supplied us with cash and other articles of immediate remittance to Great Britain. That the late unconstitutional law, the stamp act, if carried into execution in this province, will further tend to prevent our making those remittances to Great Britain, for payment of old debts, or purchase of more goods, which the faith subsisting between the individuals trading with each other requires, and therefore, in justice to ourselves, to the traders of Great Britain, who usually give us credit, and to the consumers of British manufactures in this province, the subscribers hereto have voluntarily and unanimously come into the following resolutions and agreements, in hopes that their example will stimulate the

good people of this province to be frugal in their use and consumption of all manufactures excepting those of America, and lawful goods, coming directly from Ireland, manufactured there, whilst the necessities of our country are such as to require it; and in hopes that their brethren the merchants and manufacturers of Great Britain will find their own interest so intimately connected with ours, that they will be spurred on to befriend us from that motive, if no other should take place.

First. It is unanimously resolved and agreed that in all orders any of the subscribers to this paper may send to Great Britain for goods, they shall and will direct their correspondents not to ship them until the stamp act is repealed.

Secondly. That all those amongst the subscribers that have already sent orders to Great Britain for goods shall and will immediately countermand the same until the stamp act is repealed, except such merchants as are owners of vessels already gone or now cleared out for Great Britain, who are at liberty to bring back in them on their own accounts, coals, casks of earthenware, grindstones, pipes, iron pots, empty bottles, and such other bulky articles as owners usually fill up their ships with, but no dry goods of any kind, except such kind of dye stuffs and utensils necessary for carrying on manufactures that may be ordered by any person.

Thirdly. That none of the subscribers hereto shall or will vend any goods or merchandize whatsoever that shall be shipped them on commission from Great Britain, after the first day of January next, unless the stamp act be repealed.

Fourthly. That these resolves and agree-

ments shall be binding on all and each of us the subscribers, who do hereby each and every person for himself, upon his *word of honor*, agree that he will strictly and firmly adhere to and abide by every article from this time till the first day of May next, when a meeting of the subscribers shall be called, to consider whether the further continuance of this obligation be then necessary.

Fifthly. It is agreed that if goods of any kind do arrive from Great Britain, at such time or under such circumstances as to render any signer of this agreement suspected of having broken his promise, the committee now appointed shall enquire into the premises, and if such suspected person refuses or cannot give them satisfaction, the subscribers hereto will unanimously take all prudent measures to discountenance and prevent the sale of such goods, until they are released from this agreement by mutual and general consent.

Lastly. As it may be necessary that a committee of the subscribers be appointed to wait on the traders of this city, to get this present agreement universally subscribed, the following gentlemen are appointed for that purpose: Thomas Willing and Samuel Mifflin, esq's, Thomas Montgomery, Samuel Hewell, Samuel Wharton, John Rhea, William Fisher, Joshua Fisher, Peter Chevalier, Benjamin Fuller, and Abel James.

Thomas Willing,	John Hart,
James Pemberton,	Tench Tilghman,
Joseph Hoxe,	Cad. & Sam'l C. Morris,
Joshua Fisher & Son,	Joseph Saunders,
B. Fuller,	Baynton, Wharton &
Samuel Burge,	Morgan,
Buckridge & Sims,	Alexander Smith,
Thomas Bond, jr.,	Kearney & Gilbert,
T. Morris, jr.,	Samuel Smith,
Amos Strettell,	Wm. Storrs Frey,
Joseph Swift,	John Cox, jr.,
Thomas Montgomery,	Abraham Usher,
John Chew,	Peter Wikoff,
Stamper & Bingham,	Frs. Richardson, jr.,
Abra. Mitchell,	David Hall,
John Bayard,	Stephen Carmick,
John Gibson, jr.,	William Scott,
Thomas Smith,	James Budden,
Conyngham & Nesbitt,	Samuel Mathew,
Carsan, Barclay &	John Shee,
Mitchell,	Robert Morris,

Israel Morris, jr.,	Thomas Wallace,
Benjamin Gibbs,	Benjamin Levy,
Francis Teyes,	Benjamin Swett, jr.,
Robert Montgomery,	Thomas Wharton,
Samuel Caldwell,	Daniel Rund & Co.,
John Ladd Howell,	John Nixon,
Samuel Purviance, jr.,	Joseph Whorton, jr.,
John Rose, jr.,	Persifor Frazer,
Benjamin Wynkoop,	Enoch Story,
John Wikoff,	John Ord,
Francis Harris,	Caleb Jones,
Samuel Morris, jr.,	Josiah Hewes,
Daniel Roberdeall,	Samuel Mifflin,
William Lloyd,	Thomas Riche,
James Harding,	Samuel Purviance,
Peter Reeve,	Willing & Tod,
Samuel Hudson,	George Clymes,
Daniel Benezet,	David Beveridge,
Samson Levy,	George Emlen, jr.,
Joseph Dean,	George Bryan,
John & Peter Chevalier,	Townsend White,
David Deshber,	Peter Knight,
David Sproat,	Alexander Huston,
William Richards,	John Sparhawk,
David Potts,	Thomas Turner,
Wells & Jackson,	James & Drinker,
John and David Rhea,	Francis Wade,
Keefe Meredith,	James Jann,
Joseph Richardson,	Samuel Howell,
Joshua Howell,	William Rush,
Richard Parker,	Henry Donaldson,
Samuel Morton,	Elijah Brown,
William Heysham,	John Mifflin,
John Peirse,	John Morton,
William Bradford,	Archibald McCall,
Thomas West,	John Measse,
Benjamin Rawle,	John Armitt,
James Harvey,	Samuel Meredith,
Zach. Hutchings,	Charles Coxe,
Philip Benozet,	Thomas Penrosse,
Tench Frances,	James Penrosse,
Joseph Wood,	Dowers & Gooke,
Thomas Wharton, jr.,	Samuel Bunting,
Benjamin Morgan,	Thomas Clifford,
William Dowell,	Isaac Cox,
Charles Thomson,	Samuel Smith,
William Sidgreaves,	James Hartley,
James Benezet,	S. Shoemaker,
William Henry,	William Allison,
George and John Kidd,	Hyman Levy, jr.,
Peter Turner, sr.,	James Whardon,
Isaac and Jos Paschall,	John Bell,

Lydia and Elizabeth Magee & Sanderson,	John Leacock,	John & Thos. Phillips,
Hyde,	James White,	Latham & Jackson,
Joseph Jacobs,	John Allen,	Charles Wharton,
William Symonds,	George Glontworth,	Alexander Dunan,
John Test,	William Pussy,	John Heaton,
Joseph Pennock, jr.,	Joseph King,	Charles Batho,
Robert Taggart,	William and Samuel	Richard Budden,
William Talconer,	Corry,	John Dickinson,
William Craig,	Thomas Paschall,	Philn. Dickinson,
Owen Biddle,	Oswell Eve,	Wm. Logan,
Benjamin Hooton,	John Cottringer,	John Boyle,
David Bacon,	Wm. Ball,	Robert Harris,
Samuel Carruthers,	Wm. Moore,	James Alexander,
Jacob Shoemaker, jr.,	Clement Biddle,	Joseph & Amos Hill-
Bartram & Dundas,	Jacob Duchs,	born,
Robert Bass,	Joseph Richardson,	Plan Heeson,
Peyton & Adiock,	P. Turner, jr.,	Barnard & Jouquiz,
Nath. Tready,	John and Lamb. Cad-	James Clayprole,
Richard and Peter Foot-	wallader,	Thomas Charlton,
man,	Iona Brown,	Isaac Morris, jr.,
A. D. Hoops,	Will Humphreys,	Peter Howard,
Caleb Hewes,	John Wharton,	Marcy Gray,
Samuel Fisher,	Godfrey Laycock,	Israel Pemberton,
Joseph Baker,	Charles Stedman, (for	Richard Humphreys,
Coxe & Trueman,	self and brother.)	Magdalen Devine,
Robert Waln,	Benjamin Armitage, jr.,	John Wallace,
George Robotham,	Robert Wilson,	Caleb Foulke,
Andrew Bankson,	Samuel Ormes,	Richard Stevens,
Hugh and Geo Roberts,	Joseph Trotter,	Wm. McMurtrie,
Jeremiah Warder,	George Morrison,	Francis Street,
Robert Tuckniss,	E. Milne,	Andrew Allen,
John Steinnetz,	Cornelius Bradford,	Wm. Fisher,
Hugh Forbes,	Abel Jamessigns,	Ellis Lewis,
B. F., for R. Mitchell,	For Jonathan Zane, by	Neave & Harman,
Joseph Claypoole,	his desire.	Lester Falkner,
Richard Swan,	Samuel Pleasant,	Mathias Bush,
Allen & Turner,	Thomas Savage,	Michael Graty,
John Ingles,	Wm. Wilson,	Bernard Graty,
John Pringle,	Benjamin Harbeson,	Daniel Williams,
John Nelson,	Woodham & Young,	Humphrey Robinson,
Garret & Geo. Meade,	William Ibeson,	John Bringham,
J. Craig,	Stephen Collins,	James Hunter,
William Morrell,	John Head,	Bartram & Lennox,
John Bayly,	Jacob Winey,	Philip Kinsey,
John Peters,	John Drinker, jr.,	Daniel Wister,
Hubley & Graff,	Samuel Cheesman,	Henry Kepple, sr.,
Thomas Dicas,	W. Shippen, jr.,	John Wister,
Mease & Miller,	Isaac & Moses Bartram,	Moses Mordecai, X his
John Reynell,	Wm. Clampsery,	mark,
William and Andrew	A. Morris, jr.,	John Kidd,
Caldwell,	T. S. Jones, for	Thomas Carpenter,
James Searle,	& Wall,	Stephen Shewell,
Henry Kippell, jr.,		
John Hughes,		
Reuben Haines,		
Owen Jones,		
Elijah Puschall,		
Benjamin Davies,		
Hudson Emlen,		
Richard Waln,		
Peter Thomson,		
William Pollard,		
Thomas Lawson,		
Judah Sonthe,		
John Cox,		
Theo. Gardner,		
Samuel Sansom, jr.,		
Th. Bond,		
James Eddy,		
Philip Kearney, jr.,		
Richard Bache,		
Jona. Evans,		
Anthony Stocken,		
Jo. Smith, jr.,		
Hugh McCulloch,		
John Knowles,		
Wm. Vanderspregoh,		
Phil. Syng,		
Isaac Wikoff,		
Ann Pearson,		
John Baldwin,		
Benjamin Kendall,		
William Hodge,		
John Fullerton,		
James Stuart,		
Abraham Bickley,		
James Maccubbin,		
Thomas Cadwalader,		
James Tilghman.		
William Bryan,		
Hers. Courteney,		
John Moore,		
John Byrn,		
Thomas Robinson,		
Christopher Marshall &		
Sons,		
Benjamin Marshall,		
Benjamin Chew,		
David Franke,		
John White,		
John Flanagan,		
Ben. Booth,		
Wm. West,		

Shaw & Sproggell,	George A. Morris,
Henry Harrison,	John Wood,
P. Sonmans,	Walter Shee & Sons,
John Wilcocks,	John Keasslyn,
John Priest,	Murray & Blair,
Orr, Glunholm & Co.,	George Davis,
Wm. Nicholls,	Wishart & Edwards,
W. Barker,	Job Morris,
David McMurtrie,	McNeill & Tolbert,
Robert Hardie,	Jos. Redman,
James Wallace,	Samuel Mifflin for Phin-
James Fulton,	eas Bond,
Hugh Bowes,	Vincent Montgomery &
Charles Meredith,	Son,
John Clayton,	William Turner,
John Reeve,	Tho. Lightfoot,
Stewart Duncan & Co.,	Thos. Mifflin.

Mr. Barker adopted the views of this association, and has always advocated them.

Seeking relaxation from the turmoil of politics and business, he, accompanied by his family, that of a rich merchant residing in Broadway, New York, and Myers Fisher, esq., of Philadelphia, was in 1807 at Ballston-Lake, where Mr. Fisher and the merchant accompanied him in a dug-out, on a fishing excursion. They were very successful, and returned at noon, a calm, hot day of August, when one of the ladies seeing the success which had crowned the efforts of the fishing party, insisted on testing their angling skill. The lady of the merchant, the daughter of Mr. Fisher, and a small boy, the son of Mr. Barker, took their seats in the little boat, and left, accompanied by Mr. Barker. When a short distance from the shore, Mr. Fisher called "Jacob," (no doubt associating him in his mind with Nantucket,) "do not return without a whale." Mr. Barker paddled the boat to the upper end of the lake, where success smiled on the fair, which so elated the lady of the merchant that, after throwing over her line, meaning to place her hand on the gunwale of the boat, missed it, lost her balance, and went with the chair on which she was sitting, into the lake. At the bottom the grass had grown very high, in which the large leghorn hat she wore got entangled. She did not come up. Fortunately her foot was entangled in the chair, which, although also submerged, was within arm's length, which enabled Mr. Barker to disengage the lady from the grass and bring her to the surface of the water,

when a new difficulty presented itself. The boat could not land on account of the extended marsh, and being small, an attempt to take the lady on board would have endangered the lives of all. To prevent fatigue, she was requested to refrain from all exertion, settle down in the water to her chin, and hold on the gunwale of the boat with one hand until it could be paddled to the place of their embarkation, a distance of near two miles, with which she promptly complied.

During the passage Mr. Barker exerted all his conversational powers to divert her mind from surrounding scenes. On approaching the landing place her husband and Mr. Fisher were on the shore, when Mr. Barker had great difficulty in repressing a disposition he felt to call out, "I have got the whale." The husband rushed into the water nearly frantic, to the rescue of his wife, who had borne the voyage with admirable fortitude and good nature. She was received kindly at a cottage in the neighborhood, and provided with dry garments. The party lingered about the place till night-fall, the lady not liking to return to the *sans souci* with her borrowed apparel, lest her perilous adventure should become public. Secrecy was enjoined on all, particularly the little son of Mr. Barker. He thought it was a secret worth knowing; he therefore imparted it bright and early the following morning to those who occupied the neighboring rooms, and the astonished lady received the congratulations of the inmates of the establishment as she came to the breakfast table.

Some years after Mr. Barker became established in business, a shoemaker's boy called to leave a pair of boots, when the beautiful museum boy was recognized. Misfortune had overtaken the family of Gardner Baker, the proprietor, they had been dispersed, the museum broken up, and little James bound to a shoemaker. Mr. Samuel Thompson, a wealthy citizen, happened to be present, became interested in the lad, interceded with Mr. Barker to take him into his family and educate him, to which he consented, if Mr. Thompson would obtain his release from the shoemaker. He did so by paying fifty dollars.

The lad was taken into the family of Mr. Barker and brought up with the same care as was bestowed on his own children, sent to

school in the United States and France; he returned as he went, amiable and comely, when he entered the counting house of Mr. Barker and became a good book-keeper. He had not the least turn for merchandising, and was totally unfit to wrestle with the world.

When the war came on he obtained a commission in the army, returning to civil life at its close, married and settled in Virginia, where he became religious, and has led a very exemplary life, always cherishing the greatest affection for Mr. Barker and his family.

Mr. Barker had scarcely retrieved the loss sustained by Mr. Deaves, whose estate paid only ten pence on the pound to his creditors, before he encountered another loss of about forty thousand dollars by the failure of a commercial house at Portland. A ship of theirs consigned to Mr. Barker was dispatched to New Orleans to load cotton on account of her owners, to pay for which bills were to be drawn on them or on Mr. Barker, at the option of the shipper; a part was drawn on each. Mr. Barker intended only to bind himself to honor such as should be drawn on him; his letter was so incautiously worded that he was held liable for the whole, although he had not any advice of those drawn on the owners, nor any intimation that he was considered liable therefor until after the failure. He had some fifteen or eighteen ships decaying by the wharves during the embargo of 1807.

Mr. Barker had the good fortune to have the services of Fitz Green Halleck, esq., for nearly twenty years, as his confidential clerk, when his business ceased to yield him the power to employ others. Mr. Halleck devoted himself to literary pursuits, in the expectation that Mr. Barker would retrieve his fortunes and have occasion for his further services. Fortune continuing to frown on Mr. Barker's efforts, a neighboring merchant offered Mr. Halleck employment at \$1,500 per annum, which he named to Mrs. Barker, when she inquired if he would enter the service of another for the miserable sum of \$1,500. The reply was, "No, madam, it is the miserable want of \$1,500 that may tempt me." The offer was declined, and he soon thereafter entered the employ of John Jacob Astor, with whom he continued until the death of that gentleman.

On the great New York conspiracy trials of 1826, the public prosecutor called Miss Jarvis,

Mr. William R. Thurston, Mr. Halleck, and many other friends and relatives of Mr. Barker into court to prove who his intimates and associates were, who visited his house—in other words, with whom he would be likely to confer. Mr. Halleck, with apparent astonishment, repeated the question and answered, "Jacob Barker does in all things as he lists, without counseling with any one."

Mr. Barker's confidence in his own views, and on all subjects, his promptness in declaring those views, and his pertinacity in adhering to them, has operated to his prejudice through life more than any other cause; however quick his perception and sound his conclusions, he is too rapid in advancing them before others less intuitive have had time to reflect and perceive their tendency. Few men, whether they be judges, divines, doctors, lawyers or philosophers, countenance self-sufficiency in those who have not had the advantage of instruction in their science.

Most things require combinations to effect great objects, hence the utility of party discipline, mercantile and religious associations, banking and other incorporations, for all which Mr. Barker's course of life indicates that he felt himself competent, relying upon the intelligence of the people to decide all things correctly, without the aid of artificial combinations.

Clear-headed men of lofty minds are beyond the reach of selfish and narrow consideration, hence the influence of Mr. Barker's opinions with such men as Madison, Hamilton, Armstrong, Clinton, Spencer, and generally with the higher courts of New York.

The causes of complaint by the United States against Great Britain and France were equally imposing. The Berlin and Milan decrees of France, and the orders in council of England, were alike just causes of war on the part of the United States; the only question to be considered was expediency.

An embargo was recommended by Jefferson and adopted by Congress. News thereof reached New York on Christmas day, 1807; the Democratic Club assembled at Benjamin Cheatham's, in Pine street, on the evening of that day, of which De Witt Clinton and Jacob Barker were members and both present. Mr. Clinton on that occasion broke ground against what he called the rule of the ancient domin-

ion; said "that the United States should declare war against France; that the finger of Napoleon was in the embargo; that it was the effect of French influence, and that he had evidence thereof in his pocket," meaning letters from members of Congress. Mr. Barker advanced contrary opinions, justifying the embargo. Mr. Clinton thereupon became estranged from most of his political friends in the city. He soon found out that he had been misinformed. He was at the time a member of the New York Senate, where he took occasion to make a speech of the following import:

LEGISLATURE OF THE STATE OF NEW YORK.

IN SENATE, TUESDAY, JANUARY 31, 1809.

MR. CLINTON'S SPEECH.

"MR. PRESIDENT: The critical situation in which the United States are placed, assailed from without and from within, menaced on the one hand by foreign violence, and on the other by domestic faction, renders it the incumbent duty of the State governments to step forth and unite their energies with those of the general government. At no period since the revolution have we been in greater jeopardy, and at no period have harmony, patriotism and exertion, been more necessary to ward off the dangers with which we are menaced. When I can plainly perceive a spirit of faction and sedition exhibiting itself in the most odious light, and evidently acting in obedience to the nod of a foreign government, and that government at the same time assailing our rights and trampling on our honor, I think it our duty to declare our sentiments to the world, in a voice that can be heard and understood. I have therefore prepared some resolutions which I will now present; and upon which I will detain the Senate with a few remarks. Indeed, the subject is so well understood that I would have preferred silence, if silence were compatible with the importance of the occasion, and with the respect due to the Senate.

"I shall pass over the inimical spirit which has been generally evinced by Great Britain during Mr. Jefferson's administration, her restrictions upon our commerce, and the unjust decisions of her admiralty courts, the judges of which are paid in proportion to the amount of their condemnations. Nor will I particularly dwell upon the numerous acts of violence and insult which have been committed upon our coasts and within our harbors. It has been common for vessels of Great Britain to station themselves at the mouths of our harbors, to examine all vessels entering or departing, to capture on the most frivolous pretexts, and to expose us to all the evils of a blockade. An English frigate has entered the port of New

York, and has openly *impressed* seamen from a merchant vessel at the quarantine ground. Instead of being punished by his government for this audacious outrage, it is said that the captain was promoted to the command of a seventy-four. Part of a French squadron was pursued by a British fleet within the jurisdictional line of the United States, and a French seventy-four was burnt on the coast of North Carolina. The murder of Pierce is fresh in our memories. An American citizen, in the pursuit of his ordinary business, and even when obeying a command to come to, was *murdered* within our waters, by the infamous Whitby. At the time this atrocity was perpetrated, the offending vessels were within a marine league of our coast, and Pierce's vessel was near the shore. The sensibility felt and expressed by all parties on this occasion, excited terror in the breast of the ruthless murderer, and in a struggle between his pride and his fear, he wrote a letter to me as chief magistrate of the city of New York, attempting to palliate his enormity, but at the same time criminating the magistrates, for the detention of some of his officers in the city, (an allegation totally destitute of truth,) and breathing insult and menace. The conduct of Whitby was represented to the President. A formal complaint was made to the British ministry. A court martial was instituted. Witnesses were sent over to England at a great expense, who fully substantiated the charges against him. The court *acquitted* him, and his sword was restored to him with a *complimentary* speech from the presiding officer. This mock trial, by a packed court, was more insulting than no trial at all, and one of the most atrocious crimes that man can perpetrate against man, one of the most insufferable insults that nation can commit against nation, is to this day unpunished and unexpiated. The President of the United States, on this occasion, issued his proclamation, interdicting the offending vessels from the rights of hospitality. One of them, the *Driver*, afterwards proceeded to the port of Charleston, and the captain there refused to comply with the injunctions of our government in terms of insolence and defiance, and compared our national chief magistrate to one of the petty despots of the Barbary coast.

"But the great subject of controversy between the two governments is the impressment of seamen from American vessels. The right of impressment involves the right of search, and the right of search extends by the law of nations to two cases only, contraband articles and enemy's property. The latter is even a doubtful point. The great object of the armed neutrality formed by the empress of Russia was to assert and maintain the doctrine that free ships make free goods. But as this point has been conceded when General Washington was President, and Mr. Jefferson Secretary of State, it will not be proper to discuss our claims on this occasion. But there is no law in the

code of nations, which authorizes a search and an *impressment* of seamen on board of neutral vessels. This is an odious extension of a system of domestic tyranny to the citizens of foreign nations. The right to impress British subjects on British territory has been seriously doubted, and is extenuated only on the ground of necessity—the tyrant's plea. To apply this assumed right, so questionable as it respects their own subjects or territories, to the citizens and vessels of foreign governments, is an execrable encroachment on the independence and rights of nations. The mode in which it is exercised is calculated to produce the greatest oppression. A merchant vessel is detained on the highway of nations. A lieutenant or some petty officer is sent on board, the sailors are mustered on deck, and the slave of despotism selects his victims without respecting the claims of citizenship, the demands of justice, or the prayers and supplications of the kneeling, friendless sailor. All he regards are physical ability and nautical dexterity. Thus an ignorant, prejudiced and interested instrument of tyranny is constituted a judge in our own jurisdiction, (for I contend that we have complete jurisdiction on board our vessels on the high seas,) to determine on the citizenship of Americans, to decide whether our brave tars shall be slaves of the worst kind, or continue freemen. The practice partook of the character and nature of the pretension; and on every sea, and in every harbor, American citizens were wrested from their ships by force, incarcerated on board foreign vessels, torn from their family and country, and compelled, not only to endure more than Egyptian bondage, but also to fight the battles of the very tyrant who enslaved them. The supplications of our unfortunate seamen reached the government from every quarter of the globe, and every gazette was filled with melancholy accounts of their sufferings. Our administration, ever attentive to the interests of their country, have not failed to call the attention of the British ministry to this subject, to protest against their usurpation, to demand redress, and insist upon a relinquishment of their pretended right. After many difficulties and great efforts, the British ministry evinced a disposition to relax, and in verbal conference it was at one time agreed between Mr. King and Lord Hawkesbury, that Great Britain should not exercise her pretended right of impressment on the high seas. Had this modification been observed, although not entirely satisfactory, yet it would have been gaining a great deal, and would have served as a preliminary step to a total abolition of the practice. Before the articles of the contemplated treaty were reduced to form, however, unexpected difficulties were raised—the omnipotence of the British navy might be affected. And to enable Great Britain to back out of the negotiation with some

appearance of decency, a reservation of the right within the four seas, and an implicit acknowledgment of her exclusive dominion to that extent was set up and made a *sine qua non*, on the part of Great Britain. This broke off the negotiation, and our seamen continued exposed to vexation, to unrighteous imprisonment, and to every indignity and injustice—"hewers of wood and drawers of water," the mere slaves of British oppression.

"Messrs. Munroe and Pinkney, our ministers at London, found that this usurpation was the great stumbling-block in the way of a renewal and arrangement of a treaty with Great Britain. With dispositions by no means unfriendly to this country, the administration of Mr. Fox were still unwilling to abandon the pretension, and after much difficulty, it was finally agreed that every obstacle in the power of the ministry should be interposed against *practical* oppression. And the treaty was accompanied by a written declaration of the British ministers, of a right reserved, to violate it, with a view to retaliation upon France. This unsatisfactory provision for the protection of our seamen, and this unprecedented declaration that the treaty should be obligatory on us at all times, and should only be binding on Great Britain when she did not see fit to assert the law of retaliation, rendered its ratification impossible. And the sending it back unratified, with a view to the renewal of the negotiation, could not be considered as offensive to Great Britain, because our ministers, at the formation of the treaty, assured her ministers that they exceeded their instructions, and did not consider their government committed to sanction the arrangement. With every disposition to benefit their country, with talents adequate her rights, and after the most earnest and commendable exertions, after having exhausted every argument, and after having appealed in the most powerful manner to her interests and her sense of justice, all that our ministers could obtain from Great Britain was an empty declaration in favor of the rights of our seamen, which, however plausible on paper, would, in fact, have been no barrier against the most enormous oppression. Small as our confidence was in the justice of Great Britain, particularly after the establishment of the present ministry, which is composed of the understrappers and disciples of Pitt, Dundas, and Jenkinson, the decided foes of America, and as humble in talents as they are destitute of integrity, still it was not dreamed that an act so atrocious in its character, so unauthorized in its principle, so unprecedented in the annals of nations, and so alarming to the world, as the attack on the Chesapeake, could be committed. The nature of this outrage is well understood. It has commanded the attention and excited the indignation of every American. An American ship of war was detained on the ocean, under

the pretence of the right of searching for deserters, was attacked, and was overpowered by a British armed vessel, the lives of American citizens destroyed, her crew was mustered on deck, and some of them impressed and forcibly dragged away, and to complete the inhuman catastrophe, one or more murdered under the forms of justice. When this event was announced, but one emotion thrilled the bosoms of our citizens. Those of New York, of all parties, laying aside their differences, assembled together, and in the face of day, and in the presence of their God, pledged themselves to support the government in all measures that might be adopted to vindicate our national honor and to maintain our rights. Similar declarations were made in all parts of the United States. All America appeared as if animated with but one feeling, as expressing one voice, and tendering an united and energetic support to the government. Would to God that these sentiments and feelings had continued in force to this day. If they had, the storm which now threatens our country would probably have passed by. If our national government were actuated by that hostility to Great Britain and that partiality to France which have been so unjustly ascribed to them, this would have been a period peculiarly favorable to promote their views, to wreak their vengeance, and to gratify their prepossessions. An immediate convocation of Congress at this time, when the public sensibility was so strongly excited, might have resulted in a declaration of war. The President, desirous of maintaining a friendly position with Great Britain, and averse to close the door to conciliation, preferred the path of negotiation. Our ministers were instructed to demand atonement for this signal aggression, and as it had grown out of the pretended right of search and impressment, and as the calamities of our seamen were continually increasing, they were instructed to strike at the root of the evil, and to connect that usurpation with the institution and management of the negotiation. This mode was opposed by Mr. Canning at the threshold. His correspondence with our ministers was characterized by arrogant severity, and they were given to understand that a minister extraordinary would be sent to this country to tender an adequate reparation. Great Britain had then a minister in this country, who might have been instructed to make the necessary explanations, without the pomp and pageantry of a special mission. But it seems that views far different from friendly ones were in agitation. Mr. Erskine, the resident minister, was the son of the ejected lord high chancellor. He would not perhaps be as suitable, as trusty and as confidential an instrument, to be initiated in the arcana of ministerial policy as the son of old George Rose, the unblushing advocate of corruption, and the ready prostitute of

any ministry that would employ him in any work however dirty or despicable. The conduct of the envoy extraordinary was correspondent with the character and the views of his constituents. It demonstrated that he was not sent here to furnish redress and maintain peace, but that he was commissioned to disgrace our government by his Machiavelian arts, to embarrass the operations of our administration, to foster the spirit of discontent, to dispense the ailment of faction, to cherish a British party in this country, and to spy out the nakedness of the land. His arrival on our coast, and before he set his foot on our shores, was marked with a haughty air, and his affected scruples about landing until certain formalities were complied with, too palpably exhibited the spirit and the future course of his mission. The national government, in order to evince their sincere disposition to maintain the relations of amity with Great Britain, consented at once, with great frankness and cordiality, to remove the obstacle which had taken place in Europe, and to confine the negotiations to the attack on the Chesapeake. But here an unexpected demand was made by Mr. Rose, which demonstrated the most unfriendly disposition, and a settled and inveterate design, either to disgrace our government, or to preclude all hope of amicable adjustment. When the attack was made upon the Chesapeake, the President had issued a proclamation, as authorized by an act of Congress, to prohibit all British armed vessels from entering the waters of the United States and partaking of the national hospitality.

"And here I would observe that, by the law of nations no army has a right to enter or pass through the territory of another government without permission, and this is ever considered a matter of courtesy or indulgence, and by no means a question of right. The same rule is in strictness applicable to naval armaments, and under the law of nations no armed ship has a right to enter the ports of a foreign country without leave of the sovereign, unless in stress of weather or to avoid the pursuit of an enemy. As our treaty with Great Britain had expired, she had upon general principles no right to complain, unless a different system to a nation hostile to her should indicate partiality. And here the charge of partiality must fall, because it is not alleged that the armed vessels of France had insulted our government, murdered our citizens, or trampled on our independence, and therefore a similar rule applied to them would have been unjust and unmerited. A peremptory demand to revoke that proclamation was made, and this, too, before any reparation was offered for the insult on the Chesapeake. Thus a measure, flowing from an aggression, was to have been rescinded before the cause to which it was an effect was removed, precisely reversing the order of events, and requiring the injured party to make the first

apology to the aggressor. In vain was it urged by our government that the proclamation was a preventative, not a remedy; a precaution, not a punishment, and that until it was shown by an adequate reparation that the injury should not recur, it was proper that the precaution should continue. Mr. Rose was inexorable. In order to test the sincerity of his constituents, and to silence every pretext for standing out, our government made overtures the most fair and conciliatory that could possibly be devised. It was proposed that the revocation of the proclamation, and the tender and acceptance of an adequate expiation, should be concurrent and contemporaneous. This unexceptionable proposition was rejected, and thus terminated the mission of Mr. Rose. Will it be believed that any man in America would have the unblushing effrontery to criminate the conduct of our government in the management of this negotiation? And yet, I cannot mention it without feelings of inexpressible regret, the legislature of Massachusetts, of Massachusetts, the cradle of the revolution, have come forward and have condescended to array themselves on this subject in favor of a foreign government against that of their country. To aggravate the injuries we had already received, and to exasperate our feelings, the king of Great Britain issued a proclamation about this time, under pretence of calling his subjects from foreign service, but evidently with a view to assert the right of search and imprisonment, and to evince his determination never to relinquish it. This right is declared in the most broad and unequivocal terms to exist and to apply to merchant vessels, and it is indeed disclaimed with respect to national ships, a case to which it never was intended to apply till the occurrence of the Chesapeake.

"To persons acquainted with the character of the British ministry, this unfriendly disposition was the undoubted harbinger of an approaching tempest. Whether it would burst in an attempt on our seaport towns, or in a general destruction of our commerce, was uncertain. It was well known that the November orders of 1793, the prototype of those of November, 1807, were issued in secret, and were only promulgated on the capture of an immense number of our vessels, and that this piratical conduct produced the embargo under General Washington. And it was again apprehended that a similar step might be taken to destroy the only commercial rival which her rapacity had left among the nations of the earth. The event corresponded with the anticipation, and the orders in council, in which the elements of rapine were combined into a system, and by which robbery and piracy were embodied in the code of British morality, were issued. It is well known that these orders excluded us from all communication with France, her allies and dependencies, which included almost the whole

of Europe, and that the only mode in which any intercourse could take place was by first paying tribute in the shape of duties. The immense naval force of Great Britain enabled her effectually to execute these edicts. The pretences she used to justify this outrage, that this system was necessary to retaliate on France, and our acquiescence in the decrees of the latter, were unjust and untenable. 1st. The Berlin decree, declaring the British isles in a state of blockade, had been officially expounded and declared not to extend to this country, which was excepted by treaty from operation. 2dly. The first instance of the infraction of the treaty, which was the case of the *Horizon*, had not reached this country so as to enable us to take ground against the unjust proceeding when the orders in council were issued. 3d. Mr. Canning has admitted that the orders in council of November, 1807, were only a ramification of those of 7th January, 1807, which prohibited neutral nations from trading from port to port of an enemy, and that they proceeded on the same ground and were justified on the same principles. The Berlin decree was issued on the 21st November, 1806, and it was impossible for us to resist its execution in any shape before the British orders of 7th January, 1807, were promulgated. 4th. The only solid apology for these outrages on the part of Great Britain is the plea of necessity, and this did not exist in any shape whatever, as is expressly admitted by Mr. Canning, in his last letter to Mr. Pinkney, wherein he vaunts of the power of Great Britain, and her having broken into atoms and totally destroyed the hostile plans of France.

"The extension of the Milan decree to us by the French courts of prizes, and the audacious letter of Champagny to our minister, wherein he attempts to hector us into the plans of France, evinced the blind, indiscriminating fury of a military despot, who, in the execution of his vengeance, and in the destruction of his enemy, has no respect for the rights of independence or the claims of neutrality. It was therefore to be expected that French decrees would follow on the heels of British orders, and that neutral commerce would be banished from the world. The Milan decree was issued on the 7th December following. It denationalized all vessels which should have submitted to the British orders, or which had been unhappily subjected to their operation. This decree was followed by the burning and capture of several of our vessels. Between French violence on the one hand, and British rapacity on the other, our commerce was swept from the ocean. Evils assailed us from all sides. The tyrant of the ocean and the tyrant of the eastern hemisphere had aimed a deadly blow at all neutral commerce, and we (I intend no profane allusion) were crucified between two thieves. When these congregated storms, black with the elements of destruction, were rolling towards

our happy shores from the other side of the Atlantic, and before the thunderbolt could burst upon its destined object, the national administration, who had watched with anxiety the approach of the tempest, had taken measures to guard against its fury. The embargo was recommended to Congress and immediately adopted. This great precautionary measure, which had been adopted by Washington in a similar juncture, was the only one which could protect our commerce from total destruction. It has accordingly saved more property to this country than would satisfy our whole national debt, and the expense of three years' war, besides preserving our national honor from humiliation, and our independence from insult. I call it a great precautionary measure, because I have always considered it in that light. It was recommended by the President with this view. It was with this view adopted by Congress, and as such it was announced to the belligerent nations. Its coercive quality was a mere incident, subordinate to and which might flow from its principle. A diversity of opinion has arisen as to the duration of this precaution, but none scarcely ever existed as to the propriety of its institution.

"In the mean time our government urged the most animated and able remonstrances against these combined systems of oppression. Propositions the most just and equitable that the wit of man could devise were made to both the offenders. It was supposed that Great Britain particularly, who annually sent to this country 12,000,000 sterling of British manufactures, who obtained from us some of the most important materials for her fabrics, and whose impolitic measures had driven from her her best and most profitable customer, would be willing to encourage an arrangement that would exclude even the pretext of complaint. It was accordingly proposed that the British orders of council should be rescinded as they respected this country, and that the embargo should be repealed as it respected Great Britain, and maintained against France, if France should persist in her aggressions upon the law of nations. Every professed purpose of Great Britain would be fully realised by this arrangement. The embargo in relation to our commerce with France, her allies and dependencies, would have the same operation as the orders of council. This overture was rejected with insult by the British ministry; and a similar one made to France was, if possible, treated with more indignity, by being passed over in contemptuous silence.

"This result demonstrated, if any doubt could have existed before, that the belligerents were entirely deaf to the voice of justice. That in their plans of exterminating each other they had no regard to the rights of unoffending nations. I entirely disclaim all partialities to France or Great Britain. I consider the men

who preside over their destinies as equally inimical to the rights and interests of humanity. But in their conduct to us, I consider Great Britain the most criminal. The decrees of France are not backed by a great naval force; whereas Great Britain is mistress of the waters of the world, the possessor of the trident of the ocean, and I think I perceive in the whole course of her measures a settled, systematic, deliberate plan of crippling our commerce, and of destroying our national importance. To repel the aggressions of France is her ostensible object, but the real cause is to be found in her hatred and jealousy. Two centuries have scarcely elapsed since the discovery of this country, and but thirty-two years since our national independence. The history of mankind cannot produce a parallel instance of such rapid and extensive prosperity.

"Next to Great Britain we have the greatest commerce, next to her the most shipping, and our neutral position amidst the wars and convulsions of Europe had given us the carrying trade of the world. Her ship-holders, her West India planters and traders, her East India Company and her navy, have raised the voice of murmuring and complaint against us. They view our extensive commerce with envy, our increasing opulence with jealousy, and our growing power with fear and terror. The hatred which grew out of the revolution has not yet subsided; it still rankles in the bosom of the maniac on the throne, and the secret influence which has encircled and controlled him from his coronation to the present time, and which has elevated the Cannings, the Hawkesburys, the Percivals and the Castlereaghs, the ephemeral statesmen of the day, still perpetuates the chagrin and still cherishes the deadly resentments which sprung from our national independence. The idea of extorting tribute from neutral commerce, under the form of duty, existed before the Berlin decree, and was zealously inculcated some years ago in ministerial publications. It is the offspring of deep deliberation and of many years consultation. The ministers who have imposed it owe no small portion of their popularity to their presumed hostility and violent measures against this country. The gasconading of the infamous Cobbett, who glories in the idea of Copenhagenizing New York, and of burying us under the ruins of our cities, is received with peals of approbation; and his scurrility against this country, his envenomed abuse of its governments, its institutions and its inhabitants, have, together with his great ability as a writer, contributed in no inconsiderable degree to give him an absolute control over the public sentiment of Great Britain.

"In this critical situation are we placed by the belligerent nations; we have our election of evils: prostration on our knees for mercy, abject submission and disgraceful vassalage, or

a manly assertion of our rights. The olive branch has been tendered for the last time, our vessels have for the last time been dispatched on a mission of peace. The measures of precaution will probably be superseded by measures of coercion, and our rights must be enforced at the point of the bayonet, and by the thunder of our ordnance. This controversy is not the strife of personal ambition, a contest between rival parties, but it is a controversy which involves the vital principles, the first elements of our national rights and prosperity. It is not a question of policy with regard to ourselves, but of national policy in respect to foreign nations. It is a question between our nation and foreign nations, between our government and foreign governments. We should therefore suppose that on this occasion party spirit would be merged in love of country, that the voice of faction would be silenced, and its arm unnerved and withered; that there would be no other dispute than who should most effectually serve his country; that America would exhibit her children in a Macedonian phalanx, presenting an impenetrable shield to future outrage, and evincing that they inherited the determination of their forefathers, to perish rather than submit to insult and dishonor. Alas! these anticipations are proved to be vain and idle.

I wish to be distinctly and explicitly understood that what I now say is not intended to criminate any body, description or party of our fellow citizens. I believe that virtue and vice, wisdom and folly, are generally distributed among parties in proportion to their relative strength and numbers. I believe that the great body of every party mean to do right, and I fully accord with a celebrated writer, that the people are never wrong in their sentiments, in their opinions often. But I do not mean to exempt from censure the desperate leaders of a profligate conspiracy against the good of our country, who at this all important period are scattering the firebrands of civil discord through the United States. The opposition now excited is not an ordinary opposition. It does not merely aim a blow at a rival party, nor is it confined to the destruction of a prominent individual. It takes a more daring and adventurous stand. It bids defiance to our laws, and threatens the dissolution of the Union. It is, perhaps, known to but few, that the project of a dismemberment of this country is not a novel plan, growing out of the recent measures of the government, as has been pretended. It has been cherished by a number of individuals for a series of years, and a few months before the death of a distinguished citizen, whose decease so deeply excited the public sensibility, it was proposed to him to enlist his great talents in the promotion of this nefarious scheme, and to his honor be it spoken, it was rejected by him with abhorrence and disdain.

Some of the newspapers of New England have at various times inculcated the treasonable doctrine in elaborate essays, and the match appears to be now lighted to produce an explosion which will overwhelm us with all the horrors of civil war. It cannot be necessary, sir, to expatiate on the calamities which will result from a severance of the Union. I cannot picture to my imagination a greater evil. It will be the opening of Pandora's box; partial confederacies arrayed in hostile form against each other; foreign influences infused into the very heart of the body politic; injurious restrictions and vexatious regulations on commerce and intercourse, standing armies, civil wars, military despotism. Such, sir, will be the deplorable situation of our country; and this State particularly, whichever way she turns, will be a bordering State, and exposed to the greatest injury. If she remains true to the western, southern and middle States, she will be bounded by three of the States of the eastern confederacy. If she joins the eastern factionists, she will border on some of the southern confederation. Our commercial emporium, the great depot of the commodities and trade of more than one-half of the United States, and the greatest mart of foreign commerce, will be exposed to plunder and contribution. The narrow tongue of land which runs up from the southern extremity of the State, will be liable at all times to be overrun by a superior hostile force. And after having travelled through a sea of blood, some daring adventurer, some Caesar, some Cromwell, or some Bonaparte, will seize the government by force, and reduce us and our posterity to slavery. My blood freezes with horror, and every feeling of my heart revolts at the dreadful prospect. May God in his infinite mercy avert these disasters from our beloved country. Should that direful time ever occur, our sky will be enshrouded in clouds and darkness, and the sun of American glory will set forever.

"Look, sir, at the storm which is gathering in the east, its clouds are black, heavy and portentous. Look at the resolves of several of the towns, and even of the capital of Massachusetts. Observe the disorganizing, jacobinical, seditious and traitorous spirit which prevades them. The legislatures of the different States are invited to array themselves against the general government. The very men who a few years since were the strenuous advocates for melting down the State governments, for a strong national executive, that would maintain the union of the States, for an energetic, absorbing national government that would control and regulate the centrifugal force of the local governments; these men are now the warm partizans of State supremacy, the devoted friends of the State legislatures. The resolutions of Boston are more seditious and reprehensible than any that were passed at the time

of the western insurrection in Pennsylvania, and they are certainly intended to infuse a spirit of treason into the proceedings of the State legislature. We are told that a special session of the legislature of Connecticut is to be had. Is this a link of the same chain? Is this a part of a system of severance? Is this the commencement of the northern confederacy which was threatened last summer? It is time, it is high time, that this great State should come forth in all her strength, and exhibit a decided front, and an erect attitude in favor of the violated majesty of the laws, it should frown into nothing the Catalines and the Borgias of our country; it should let the eastern States know at once that they have nothing to expect from us but decided opposition to a dismemberment of the Union. I trust in God, sir, that a majority, a great, a commanding majority of our eastern brethren will be found faithful to themselves, to their country, and to posterity. I cannot believe that a people so intelligent, so patriotic, so pure in morals, and a people who have been the first in the ranks of liberty and patriotism, will at once renounce the high character they have hitherto sustained, rally round a foreign government in opposition to their own, and cherish the principle of disorganization, confusion and discord. Is there not reason to apprehend that there is an intimate understanding between the Essex junto and the British ministry, and that foreign influence has struck its deadly roots deep in that portion of our country? The publication of Canning's false and malignant letter, the violent declamations in favor of Great Britain, the servile vindication of her measures towards the United States, and even of the attack on the Chesapeake, show in colors as vivid as the streams of lightning the hand of Joab, and evince a deadly spirit of concert and co-operation with a foreign government. The leaders of these factious proceedings are without the semblance of excuse. Driven from power by the indignant voice of an injured people, and despairing to regain it by honest means, they appear to be governed by the same unprincipled sentiments, and actuated by the same selfish principles which the greatest of poets ascribes to the deceiver of mankind:

"———better to reign in hell
"Than serve in Heaven."

better to regain office and elevation, through blood, destruction and general ruin, than not to obtain them at all.

"I have now done, sir. I have discharged a great duty, which the situation of my country demanded. I shall call for the ayes and nays on the resolutions I now offer; not with a view of perplexing any member in giving his vote, for I fondly hope that every vote will be freely given in their favor—but that our names may be put on record, so that when the feuds and contentions which now agitate us are either

forgotten or remembered only in the historic page—when we who are here assembled shall live only in the memory of posterity, our conduct on this solemn occasion, and in this eventful crisis, may be the subject of its impartial judgment.

[Mr. Clinton then introduced the following resolutions, which passed the Senate unanimously, and were agreed to in the Assembly by a large majority.]

Whereas the unjust and multiplied aggressions of the belligerent national rights, their obstinate refusal to render justice, and to listen to the most fair, friendly, impartial and pacific overtures, and their unrelenting perseverance in a system of violence, rapacity and insult, have rendered it the peculiar and incumbent duty of all good citizens, attached to the rights and the honor of their country, to bury in oblivion all internal differences, and to rally round the standard of the government in opposition to the unjust pretensions and atrocious outrages of foreign powers. And whereas, in defiance of every dictate of patriotism and every consideration of duty, the most unremitted and reprehensible attempts are making, with uncommon industry and malignity, and by every art of misrepresentation, to enfeeble and destroy the exertions of the general government in vindicating our national rights and honor, by endeavoring to alienate the affections of the people, by opposing the authority of the laws, and by menacing a dismemberment of the Union; and the legislature deeming it an indispensable obligation, at this critical and eventful period, to discountenance these daring and factious proceedings, and to bear testimony against the insolent encroachments of foreign nations, and being fully satisfied that the conduct of the national government has been calculated to secure the resources, to preserve the peace, to maintain the honor, and to promote the interests of the country,

Therefore, (if the honorable the Assembly concur herein,)

Resolved, That we repose full confidence in the wisdom, patriotism, and integrity of the national administration: and that we will, at every hazard, and to the full extent of our faculties, support them against the unjust attempts of foreign powers; and if a state of peace shall no longer be a state of honor, and a continuance of aggression shall render an appeal to the sword inevitable, we pledge our lives and our fortunes in defence of the just rights of our injured country.

Resolved, That we consider the union of the States as the palladium of our national safety, the guarantee of our national prosperity, and the pledge of our national glory, and that every attempt to violate or sever the ties which bind the confederated States together ought to receive the most pointed reprobation, and the most decided abhorrence. And we earnestly

exhort the good citizens of this State to be vigilant and active in discountenancing and suppressing all combinations and attempts to evade or violate the laws, to detract from the authority of the government, or to impair the stability of the Union; and we solemnly conjure them, by the sacred principles of liberty and patriotism, to prepare themselves for the crisis which is probably approaching, and to be ready to co-operate with each other, and with the constituted authorities, in resisting and repelling the audacious aggressions of foreign nations.

Resolved, That his excellency the governor be requested to transmit a copy of these resolutions to the President of the United States, as the sense of this State, and that our Senators and representatives in Congress be and hereby are requested to use every exertion to put the United States in the best condition of defence, so that we may be fully prepared to meet the dangers which menace the peace of our country.

Mr. Barker having a great regard for Mr. Clinton, and great respect for his distinguished talents, was very anxious to retain him in the party, it not having a surplussage of such men. He caused a thousand extra copies of that speech to be printed at New York by Mr. John Crooks, of the Mercantile Advertiser, at his own expense, in the hope that its perusal would reconcile the party to Mr. Clinton. It did not have that effect; he could not resist the influence of the adulation of the Federal party; his subsequent course extended their estrangement from each other until the war terminated.

Mr. Barker being deeply impressed with the importance of the restrictive system, wishes his views in relation thereto perpetuated; he supported the embargo and non-importation laws to the utmost of his power. He was a large ship owner; probably the largest in the United States, with the exception of William Gray, of Salem, and was conducting a large commission business when Jefferson's embargo was adopted. This measure, followed up as it was by the non-importation laws and war, greatly impaired his fortune and future commercial prospects, yet he did not falter in their support. He had a large and intimate acquaintance with the mechanic and laboring classes from the great numbers he had been in the habit of employing.

These men were thrown out of employment by the restrictive measures of the Democratic administration, and their political opponents did all they could to fan the embers and increase their discontent.

Mr. Barker, through the columns of the press, constantly admonished those suffering to be aware of the designs of these opponents of the administration, and spoke to them at the Battery and at the Park, where there were public meetings called for the purpose of engendering discontent.

The Federal party were incessant in their exertions to make political capital out of the distresses of the sailors, their landlords, the mechanics, and others who had been thrown out of employ. For this purpose they called indignation meetings. Mr. Barker watched them closely, attended their meetings, combating their doctrines, and so important did he consider it to have a daily press which would speak truth to the people, that he took the Public Advertiser, the only paper in the city advocating the restrictive system, three times out of the hands of the sheriff, at a cost of three or four thousand dollars, all of which he lost.

The Democratic party usually held their meetings at Martling's old wigwam, called the "Pig-pen," where Mr. Barker's voice was often heard.

At this period the British ships-of-war constantly infested our ports; and, on one occasion, as a coasting vessel was approaching New York from the mills in New Jersey, the captain, Pierce, was killed at the helm by a cannon ball from the British ship *Leander*, of fifty guns. When the mill boat arrived, the bleeding corpse of her commander Pierce on her quarter deck, with the stars and stripes for a pall, there was a great excitement with all classes. An important election was at hand, both political parties endeavored to make political capital out of this terrible outrage, committed on a native citizen quietly navigating his unarmed barque along the New Jersey shore.

The Federal party held a meeting at the Tontine coffee house, corner of Wall and Water streets; Mr. Barker attended, and listened to a very inflammatory speech made by the most distinguished member of that party. Among other things he said that "the hands of Jefferson were dyed in the blood of his countryman, (Pierce) he not having resisted the Berlin and Milan decrees of Bonaparte, and thereby saved Britain the necessity of sending her ships of war to our coast." The Democratic party held a meeting in the Park, where Mr. Barker is

said to have made one of his characteristic speeches.

The occasion called forth the resources of his mind; his very soul seemed wrapt up in the matter; he rebuked with great severity the sympathy manifested by the Federal party. He had the peculiar faculty of conveying his thoughts to others in a language quickly comprehended, the meaning of which was not easily mistaken.

Although subject to occasional reverses, he prospered greatly in his commercial pursuits, until he had the misfortune to incur the displeasure of Robert Lenox, a very rich Scotch merchant; although a strong-minded, intelligent man, his will and his prejudices were of the character peculiar to the nation of his birth.

Mr. Barker had, as agent for the owner, chartered to James Scott the ship *Live Oak*, of Portland, Maine, for a voyage to St. Domingo and back. On her arrival off the port of destination she found it blockaded; was ordered off, when, according to custom, she proceeded to the next port; finding that in possession of the slaves, they having revolted, the captain prudently returned to New York with the outward cargo.

A question arose whether or not the ship was entitled to compensation. Mr. Barker applied immediately to his friend and professional adviser, General Alexander Hamilton, for advice; that gentleman advised him to retain a sufficiency of the cargo to pay the amount of charter until he could advise and receive an answer from his employer, the owner of the ship. A portion less than the amount of charter was in money; it was retained.

The following day his notes offered for discount at the United States Branch Bank, where he kept his account, were all thrown out, which was followed up every discount day for two or three weeks, when Mr. Barker began to feel the effects. He knowing Mr. Lenox to be the most influential director, applied to that gentleman without the least idea of the cause, or that he was the gentleman that had induced the rejection of the notes offered; named to him the liberality with which he had always been treated by the bank, the goodness of the notes offered and their rejection, adding that he presumed there must be some hidden cause which he could satisfactorily explain if he knew what it was.

"Yes," said Mr. Lenox, "there is a cause, and if you expect any more discounts at the Branch Bank you must deliver to Mr. Scott the money you withhold from him."

Mr. Barker, astonished at the avowal, inquired if the board of directors undertook to pass ex-parte on differences which arose among merchants, neither of whom was of their number, and to enforce their decision against one of the parties without having allowed him a hearing. Mr. Lenox replied that he believed every director at the board agreed with him in opinion.

Application was immediately made to General Stevens, Thomas Buchanan, and other directors, who informed him that Mr. Lenox was mistaken; that they were opposed to all such assumption of power, and that if Mr. Lenox did not withdraw his objection they would not allow the notes of his friends to be discounted. One or two opposing a note it could not, by the rules of the board, be discounted.

This affair came to the knowledge of the directors of the mother bank at Philadelphia, yet they re-appointed Mr. Lenox a director of the New York Branch.

Mr. Barker had not any redress but to oppose the renewal of the charter of the bank, which was soon to expire. With this view he caused the whole affair to be published by Mr. Duane, in the Philadelphia Aurora. That able editor entered into the matter warmly. Mr. Barker enlisted the pen of his friend Thomas English, esq., of Philadelphia, in the cause, which greatly aided the editor in filling the columns of that paper until the question of renewal was finally settled.

He visited Washington while the subject was pending, urged on members of Congress the objection to the bank, and supplied the Public Advertiser of New York with editorial articles, not ceasing his exertions until the fate of the bank was sealed by the rejection of the bill for the renewal of the charter by Congress. This was done by a majority of only one, and as Mr. Barker's half-brother, Gideon Gardner, was a member from Nantucket and voted against the bank, it is not unreasonable to conclude that he had some influence in overthrowing the first United States Bank.

Mr. Barker's intercourse with mechanics, laborers, and others in humble life was very ex-

tensive, his influence with them was apparent, to break down which was an object of the first importance to his political opponents in their scramble for office and power; his activity, zeal and perseverance very soon arrayed the Federal party against him; their newspapers denounced him and misrepresented his every action, the effect of which was to urge him on, hurling defiance at all opponents.

The *Evening Post*, then the leading Federal paper, was particularly violent, which induced him to prepare an article, of which he sent in the morning to the office of that paper a copy, with notice that if it did not retract in the evening edition its offensive articles it would appear the next morning in the *Public Advertiser*.

The severity of this article produced the desired effect; it brought immediately to the residence of Mr. Barker David B. Ogden, esq., a distinguished professional gentleman of great merit, the friend of the editor, who notified Mr. Barker that if his publication took place he would have to settle it with Mr. Coleman on the battle field of Hoboken.

The reply was, "it will appear in the morning papers if the recantation is not made, be the consequences what they may."

The matter was arranged, and the amende honorable appeared in the *Post* of the same evening.

Mr. Coleman and Mr. Barker became personal friends, which continued until the death of Mr. Coleman.

The banks were generally conducted by gentlemen of the Federal party, who were not disposed to favor Democrats.

But few merchants advocated the Democratic side of the question; these few rarely attended the Merchants' Exchange, then held at the Tontine coffee house, Wall street.

The clamor of the opposition against the embargo was so great that it was abandoned, Congress relying on the influence of non-importation laws to bring Great Britain to a sense of justice.

The Democratic party demanded that if the Federal party would not acquiesce in the restrictive system, war against Great Britain should be substituted therefor, insisting that a declaration of war against France would be yielding to the unjust requirements of Britain,

that we could not longer, without dishonor, submit to her paper blockades, her impressment of our seamen, and especially that we could not tolerate our ships on their return voyages calling at British ports, paying toll for the right to navigate the ocean, the great highway of nations. There was great difficulty experienced in enforcing the embargo. One half of the nation opposed to it, mainly from political considerations, many from the distress occasioned by the want of employment and of a market for the surplus of our agricultural products. Therefore, after more than a year's continuance it had been repealed, substituting therefor a non-intercourse with Great Britain and her colonies, which was equally opposed by the Federal party in their efforts to regain power, and consequently the loaves and fishes, called spoils.

Mr. Jefferson's term was about expiring; great and ineffectual efforts were made by the Democratic party to induce him to consent to be their candidate for a third term. James Madison, the then Secretary of State, the friend of Washington, was nominated by the congressional Congress, and elected President of the United States.

The letter of General Washington, a copy herewith, may induce the reader to consider Mr. Madison entitled to share with the general the fame of his farewell address.

"MOUNT VERNON, May 30, 1792.

"MY DEAR SIR: As there is a possibility, if not a probability, that I shall not see you on your return home, or if I should see you, it may be on the road, and under circumstances which will prevent my speaking to you on the subject we last conversed upon, I take the liberty of committing to paper the following thoughts and requests. I have not been unmindful of the sentiments expressed by you in the conversation just alluded to; on the contrary, I have again and again revolved them with thoughtful anxiety, but without being able to dispose my mind to a longer continuance in the office I have yet the honor to hold. I, therefore, still look forward to the fulfillment of my fondest and most ardent wishes to spend the remainder of my days (which I cannot expect will be many) in ease and tranquility. Nothing short of the conviction that my dereliction of the chair of government (if it should be the desire of the people to continue me in it,) would involve the country in serious disputes respecting the Chief Magistrate, and the disagreeable consequences which might result therefrom, in the floating and divided opinions which so prevail

at present, and in nowise induce me to relinquish the determination I have formed, and of this I do not see how any evidence can be obtained previous to the election. My vanity, I am sure, is not of that cast as to allow me to view the subject in this light. Under these impressions, then, permit me to reiterate the request I made to you at our last meeting, namely, to think of the proper time and the best mode of announcing the intention, and that you would prepare the latter. In revolving this subject myself, my judgment has always been embarrassed. On the other hand, a previous declaration to retire not only carries with it the appearance of vanity and self-importance, but it may be construed into a manoeuvre to be invited to remain. And, on the other hand, to say nothing implies consent, or at any rate, would leave the matter in doubt, and to decline afterwards might be deemed as uncandid. I would fain carry my request to you further than is asked above, although I am sensible that your compliance with it must add to your trouble; but as the recess may afford you leisure, and I flatter myself you have a disposition to oblige me, I will, without apology, desire (if the measure in itself should strike you as proper, and likely to produce public good or private honor, that you would turn your thoughts to a valedictory address to the public, expressing in plain and modest terms, that, having been honored with the presidential chair, and, to the best of my ability, contributed to the organization and administration of the government; and, having arrived at a period of life when the private walks of it, in the shade of retirement, becomes necessary, and will be most pleasant to me, and the spirit of the government may render a rotation in the elective officers of it more congenial with their ideas of liberty and safety, that I take my leave of them as a public man, and in bidding them adieu, (retaining no other concern than such as will arise from fervent wishes for the honor of my country,) I take the liberty at my departure from civil, as I formerly did at my military exit, to invoke a continuance of the blessings of Providence upon it, and all those who are the supporters of its interests, and the promoters of harmony, order and good government.

"That to impress these things it might, among other things, be observed that we are *all* the children of the same country—a country great and rich in itself—capable, and promising to be as happy as any the annals of history have ever brought to our view. That our interests, however diversified by local and smaller matters, is the same in all the great and essential concerns of the nation. That the contrast of our country, the diversity of our climate and soil, and the various productions of the States, consequent of both, are such as to make one part not only convenient, but, perhaps, indispensably necessary to the other part, and may render the whole, at no distant period, one of

the most independent in the world. That the established government being the work of our own hands, with the seeds of amendment engrafted on the Constitution, may, by wisdom, good dispositions, and mutual allowances, aided by experience, bring it as near to perfection as any human institution ever approximated, and therefore the only strife among us ought to be who should be foremost in facilitating and finally accomplishing such great, desirable objects, by giving every possible support and cement to the Union. That however necessary it may be to keep a watchful eye over public servants and public measures, yet there ought to be limits to it, for suspicions unfounded and jealousies too lively are irritating to honest feelings, and oftentimes are productive of more evil than good.

"To enumerate the various subjects which might be introduced into such an address would require thought, and to mention them to you would be unnecessary, as your own judgment will comprehend *all* that will be proper; whether to touch specially any of the exceptionable parts of the Constitution may be doubted; all I shall add, therefore, at present, is to beg the favor of you to consider—1st, The propriety of such an address. 2d, If approved, the several matters which ought to be contained in it; and 3d, The time it should appear—that is, whether at the declaration of my intention to withdraw from the service of the public, or let it be the closing act of my administration, which will end with the next session of Congress, (the probability being that that body will continue sitting until March) when the House of Representatives will also dissolve.

"Though I do not wish to hurry you, (the case not pressing) in the execution of either of the publications before mentioned, yet I should be glad to hear from you, generally on both, and to receive them in time, if you should not come to Philadelphia until the session commences, in the form they are to take.

"I beg leave to draw your attention also to such things as you shall conceive fit subjects for communication on that occasion, and noting them as they occur, that you would be so good as to furnish me with them in time to be prepared and engraved with others for the opening of the session.

"With very sincere and affectionate regard, I am ever yours. G. WASHINGTON.

"JAMES MADISON, sen., esq."

The non-importation law was continued; the belligerents nevertheless continued to trample on our rights to such an extent that our honor, as well as our interest, required that something should be done to protect our mercantile marine, as well as to vindicate the national honor.

Both political parties were opposed to further submission to these encroachments on our

maritime rights; the federal party were clamorous for war against France.

The democratic party considered that we might as well declare war against the moon as against France; that she had not any foreign commerce for us to assail, nor any adjoining territory for us to invade—hence the battle (of trying which could do the other the most harm) would prove an unequal contest; our ships, the swelling sails of which whitened every sea, would become an easy prey to her thousand privateers, which would be dispatched to every ocean in pursuit of such rich prey as our extended commerce would present to their keen appetites; that an embargo would be all sufficient, insisting that as she had not any navy at sea and would not send out any other than privateers, and no adjoining territory from which to invade us, the injury would be much less than from Britain with her powerful navy, and from the facilities her adjoining territory would afford her land forces, aided by their savage allies in their assaults on our frontier towns.

The question of establishing a bank with a very large capital, to supply the void created by the termination of the charter of the United States Bank, was brought before the New York legislature, advocated by the federal party and opposed by the democratic party, both parties became very violent on the subject.

On the supposition that there had been bribery the governor, Daniel D. Tompkins, prorogued the legislature. At this time the new Tammany Hall was in progress of erection—nearly completed. Mr. Barker was a member of the building committee. He made prompt exertions to have the carpenter benches and other incumbrances removed, and the large room prepared for the accommodation of a public meeting; it was there convened. This first meeting held at the new Tammany Hall was a tremendous gathering; not one-half of those who assembled could get into the house. The room was brilliantly lighted. Mr. Barker and many others addressed the meeting, sustaining the action of Governor Tompkins, and has often been heard to say that he has not, on any other occasion, witnessed so electrifying a scene as those three thousand human faces, illuminated as well by the animating subject under discussion as by the surrounding lights.

Many distinguished men advocated the embargo. Among the number were ship owners, who were the greatest sufferers. On that subject Wm. Gray, esq., wrote as follows:

"BOSTON, *March 30, 1814.*

"FRIEND JACOB BARKER—SIR: I have received your favor of 21st instant, with the enclosure, for which I thank you.

"I was very much gratified to find Congress come out so full against the repeal of the embargo and non-intercourse. I should have considered the removal of those effectual engines against our enemy a great calamity.

"I acknowledge some of the southern States, particularly the State of Georgia, do suffer more pecuniary loss than we do; indeed, we suffer nothing. Since the embargo our coast is more free from British cruisers, and, of course, our prizes arrive more frequently. We are abundantly supplied with all foreign articles by neutrals, which is the only way we can obtain them without great loss; indeed, the imported articles, in general, will not sell for more than the cost, freight, and impost; and then, in our own vessels, all the risk is lost, which, you know, in American bottoms, is fifty per cent. Of course, it will be a ruinous business, and we are abundantly supplied with all articles by captures from the enemy. I am convinced the embargo is the most effectual measure that can be adopted.

"With respect to the loan, as soon as the capitalists are convinced it has gone to the lowest point, about three millions will be taken and retained in this place.

"I will thank you for any information on this or any other subject that will be interesting to me or our friends here.

"I am, with real esteem, your friend,
"WM. GRAY."

Mr. Madison, near the close of his first term, recommended a declaration of war against Great Britain, and an embargo, as a preparatory measure. The embargo was adopted, for ninety days. Mr. Madison was nominated for a second term. A majority of the democrats of the State of New York preferred DeWitt Clinton for the Presidency. The federalists, despairing of their ability to elect a member of their own party, resolved to support Mr. Clinton.

A majority of the democratic party of the State, including Chief Justice Spencer and Martin Van Buren, united, they insisting that war should be declared against France, or against both France and England. Mr. Clinton considered the recommendation of war against Great Britain a political device to

secure the re-election of Madison, and that he had no belief that Congress would adopt the measure he recommended. They were disappointed by a declaration of war against Great Britain, which took place on the 16th June, 1812. On the happening of that event Chief Justice Spencer, and many others of Mr Clinton's personal political friends, urged him to withdraw his name as a candidate for the Presidency, to which he had been nominated by the democratic party of the State. This, being assured of the support of the federal party, he refused to do; which caused an estrangement between the brothers Spencer and Clinton which continued until after the close of the war, when a reconciliation took place by the interposition of Mr. Barker; from which time, until the day of their death, those two distinguished men continued the devoted friends of each other and of Mr. Barker, although the political views of the Chief Justice often differed from those entertained by Mr. Barker, and both fearlessly put forth their opinions, and severally sustained the political parties to which they were attached with uncommon zeal. Mr. Clinton and Mr. Van Buren both sustained the war. They differed in their views in relation to the measures adopted for carrying it on, which estranged them from each other. Mr. Van Buren, sustaining the administration, became the opponent of Mr. Clinton's political views. The political campaign progressed with great ardor. The parties became very violent. The legislature met for the appointment of electors. Mr. Barker was, with Colonel Rutgers, Colonel Willett, and others, appointed, at Tammany Hall, delegates to attend a democratic convention, at Albany, for the nomination of electors. The friends of the two candidates, in the legislature, held separate meetings. According to the best of Mr. Barker's recollection, Mr. Van Buren presided at the meeting of the friends of Mr. Clinton; and Nathan Sanford, a senator from New York, presided at that of the friends of Mr. Madison. The former, having a majority and assured of the support of the federalists at the election, declined all propositions for a compromise and nominated an entire ticket, friendly to the election of their chief, who were elected by the aid of federal votes.

Mr. Van Buren was esteemed the master-

spirit of the whole affair. Mr. Barker remonstrated with him against their course, remarking that he would, if they persisted, plan a pamphlet describing their coalition with the federalists in every hamlet in the State. This had no influence. Mr. Van Buren was not to be diverted from the course he had adopted, vainly imagining that it would be successful.

Pending the debates in Congress on the question of war, Dr. Mitchell, a member from the city of New York, being opposed to a war, addressed a letter to the Tammany Society, in the hope of having his views sustained by that patriotic body. He asked them, among other things, if they were prepared to abandon their fruitful maritime pursuits in exchange for the frozen regions of Canada. To which they promptly replied, in effect, that the nation's honor must be sustained at every hazard.

About the same time Mr. Barker received, from a correspondent in England, letters which indicated that the British ministry would very soon rescind the orders in council, when he drafted a petition asking Congress to continue the embargo and defer a declaration of war for a short period, which was signed by men of both political parties, of the greatest respectability, to whom he exhibited those letters. The petition was presented to the Senate by Mr. Smith, a member from New York, the day before war was declared; which, on motion of Colonel Taylor, of South Carolina, was ordered to be printed. The petition and speech of Colonel Taylor, in relation thereto, were as follows:

[From Niles's Register, vol. 2, page 273.]

TWELFTH CONGRESS.

IN SENATE.—MONDAY, JUNE 15, 1812.

Mr. Smith, of New York, presented the following petition of sundry inhabitants, merchants and others, of the city of New York, praying that the embargo and non-importation laws might be continued as a substitute for war against Great Britain:

MEMORIAL.

To the honorable the Senate and House of Representatives of the United States of America in Congress assembled, the memorial of the subscribers, merchants and others, inhabitants of the city of New York, respectfully sheweth:

"That your memorialists feel, in common with the rest of their fellow-citizens, an anxious solicitude for the honor and interests of their

country, and an equal determination to assert and maintain them;

"That your memorialists believe that a continuation of the restrictive measures now in operation will produce all the benefits, while it prevents the calamities of war;

"That when the British ministry become convinced that a trade with the United States cannot be renewed but by the repeal of the orders in council, the distress of their merchants and manufacturers, and their inability to support their armies in Spain and Portugal, will, probably, compel them to that measure.

"Your memorialists beg leave to remark that such effects are even now visible; and it may be reasonably hoped that a continuance of the embargo and non-importation laws, a few months beyond the fourth day of July next, will effect a complete and bloodless triumph of our rights.

"Your memorialists, therefore, respectfully solicit of your honorable body the passage of a law continuing the embargo, and giving to the President of the United States power to discontinue the whole of the restrictive system on the rescinding of the British orders in council.

"The conduct of France, in burning our ships, in sequestering our property entering her ports expecting protection in consequence of the promised repeal of the Berlin and Milan decrees, and the delay in completing a treaty with the American minister, has excited great sensation, and we hope and trust will call forth from your honorable body such retaliatory measures as may be best calculated to procure justice.

John Jacob Astor,	William Lovett,
Samuel Adams,	William Edgar, jr.,
Howland & Grinnell,	Amasa Jackson,
E. Slosson,	Wm. J. Robinson,
Israel Gibbs,	Joseph Strong,
Isaac Clason,	Abr'm S. Hallot,
John Slidell,	Joshua Jones,
John Townsend,	Frederick Giraud, jr.,
Andrew Ogden & Co.,	Robert Roberts,
Thomas Storm,	John Crookes,
Amos Butler,	Hugh McCormick,
Ebenezer Burrill,	John Depeyster,
Isaac Heyer,	Gilbert Haight,
Ralph Bulkley,	James Lovett,
Samuel Bell,	Leffer Lefferts,
John T. Lawrence,	Augustus Wynkoop,
Joseph W. Totten,	John W. Gale,
Isaac Schermerhorn,	John F. Delaplane,
Alexander Reeder,	Peter Stagg,
Joseph Otis,	David Taylor,
Lewis Hartman,	William Adee,
Ganet & Storm,	Samuel Stilwell,
George Bement,	Jacob P. Gerand,
S. A. Rich,	John Hone,
Abr'm Smith,	John Kane,
Thos. H. Smith, jr.,	Thomas Rich,
Andrew Foster,	Samuel Marshall,
Jacob Barker,	Elbert Herring,

"After the same was read Mr. Taylor said 'that the respectability of the subscribers to a petition presented to this body, and the importance of the matter therein contained, had, on various occasions, been used as inducements to us to give such a petition a respectful *disposition* in the course of our proceedings. He recollected a case in point. It was the case of the petition of an eminent merchant of Massachusetts, presented by an honorable senator from that State, and which, at the suggestion of that honorable gentleman, was by the Senate ordered to be printed. He was of opinion that the petition just read ought not to be treated with less attention; that he had seen the petition and inquired into the character of its subscribers, and had been informed that the fifty-six subscribers to it were among the most respectable, wealthy, and intelligent merchants of the city of New York. There are to be found in that list the names of two presidents of banks, three presidents of insurance companies, thirteen directors of banks, besides other names of pre-eminent standing in the mercantile world. They had all united in the sentiments contained in the petition, notwithstanding that there existed among them a difference of political opinions, for he understood that of the petitioners forty-two were federal and sixteen republican. Mr. T. added that he considered some of the sentiments contained in the petition as of the highest importance. He hailed it as an auspicious occurrence that these honorable merchants, in praying that the evils of war might be averted from them and from the nation, had, nevertheless, held fast to the principles of resistance to the aggressions and unhallowed conduct of Great Britain towards our nation; and had exercised the candor and frankness to bear testimony to the efficiency of the restrictive system for obtaining a redress of our wrongs and, of course, the integrity and honor of those who had imposed this system for that purpose. He hoped that the example of these petitioners would tend to counteract those strenuous and unremitting exertions of passion, prejudice, and party feeling which had attempted to stamp upon the majority in Congress the foul and unjust censure of being enemies to commerce; that, however unfashionable and obstinate it might appear, he still believed that the embargo and non-importation laws, if faithfully executed, were capable of reaching further than our cannon. We are, at this very time, tendering an urgent argument—an argument to be felt by each city, village, and hamlet in England. This, touching to the quick the vital interests of that empire, would demonstrate to the people, at least, the folly and absurdity of the orders in council. The ordeal of the twenty weeks of scarcity which the people of that unhappy country are undergoing, to relieve which, but for the madness and folly of their rulers, every yard of American canvass would be spread to

the gales; the thousands of starving manufacturers thrown out of employ for want of our custom, which custom, but for the injustice of their *masters*, we were willing to give, *now feel* the efficiency of the restrictive system. These matter-of-fact arguments want no sophistry nor long speeches to give them weight. But Great Britain is proud and will never yield to this sort of pressure. *Hunger has no law*. Where was her pride during the last war, when she exported to her enemy on the continent more than eleven millions of pounds sterling for provisions, and, meanly truckling to her enemy, consented to buy the privilege of laying out her guineas for bread, and actually submitted, on the compulsion of Napoleon, to buy the wines, brandies, and silks of France which she did not want. This restrictive system, when commenced under the former embargo law, encountered every opposition among ourselves which selfish avarice, which passion and party rage, could suggest; and so successful were its assailants that, while it was operating with its fullest effects, (which the prices current of that day will show,) some of its greatest champions in the national legislature abandoned it; *yes, sir*, in the tide of victory they threw down their arms. How are the mighty fallen and the shield of the mighty vilely cast away. The disavowal of Erskine's arrangement was the consequence of this retreat. But it may be said that the sentiments in the petition were extorted by the apprehension of a greater evil—*war*. In all our trials those who had not pre-determined to submit to Great Britain must have anticipated this alternative. Let those who, by their acrimony, sneers, and scoffs, have thrown away this chief defence of our nation be held responsible for the compulsion they have imposed on us to take this dire alternative. He said that though he was unwilling to abate a single pang which we might *legally* inflict upon our enemy, and might, at the proper time, oppose anything like the swap proposed of one system for another, when we had the power and the right to impose upon our enemy both the one and the other, he nevertheless thought the petition was deserving of the attention which he now moved it should receive. He *moved* that the petition should be received; which was agreed to.'"

This petition came too late; the war party could not recede or delay the measures they had resolved on. The war was declared on the 16th of June, and the orders in council were rescinded on the 7th of July following, before news of the war reached England, thus establishing the power of the restrictive measures. Congress, on a previous occasion, empowered the President, in case the orders in council should be revoked during the recess, to annul, by proclamation, the non-importation

law; and so confident were the British ministry that he would suspend the war as soon as he heard of the repeal of the orders in council, they having been repealed before the war was known in England, that they did not send a fleet to our coast for more than three months—ocean steamboat navigation being not then known.

In this confidence the United States minister at London participated to such an extent as to authorizing the loading of all the American ships then in England with British fabrics for the United States. They sailed under British licenses and arrived in the United States safe. A great drought occurred at the same time in China, interrupting the navigation of her rivers, so that teas and other of her products could not reach Canton for a long time; this detained a large fleet of American ships at Canton until after the news of the war reached that place.

These measures combined saved the insurance companies, the ship owners, and the importers of British fabrics from ruin, which seemed to be their impending fate when the war was declared.

Mr. Madison did not feel authorized to suspend the war, or relax the non-importation law. He said the war having been declared it must be continued until other matters were settled.

When these ships arrived they, with their cargoes, were forfeited to the United States by the provisions of the non-importation laws, which remained in full force.

This immense amount of property was released on bond, and these bonds were cancelled, on the payment of the duties, by an act of Congress, which passed, after a hard struggle, by the casting vote of the Hon. Langdon Chevis, of South Carolina, then the Speaker of the House of Representatives; to the very great and praiseworthy exertions of that distinguished man the merchants in general were indebted for their escape from ruin.

Mr. Barker considers it a fortunate circumstance that the prayer of the petition was not granted, and that the war was most glorious in its results. Every American who visits a foreign country is made to feel and share in the advantage of the high consideration we have acquired.

The following, taken from Mr. Barker's

record, exhibits the conduct of himself and others more fully than can be otherwise described at this late day :

The declaration of war having taken place, the leaders of the opposition revived their plan to obtain possession of the reins of government by depriving the administration of the means of carrying it on, vainly imagining that they could thus control the friends of the country, and defeat the measures of government. Many federal men, however, dissented from those who were considered leaders; and though they maintained their political integrity, determined to do everything in their power to nerve the arm of government. This state of affairs afforded me an opportunity of becoming useful, because I had ascertained the fact that the opposition party had not much money; that the whole secret was a bank-paper fiction; and that, although they had the control of the principal banks in the United States, and were but more liable to be influenced by whatever could be made to appear for the manifest interest of such banks, everything depended on negotiation, which is a science to be acquired only by practice, as much as any of the mechanical arts.

On the 8th of February, 1813, Congress passed an act authorizing the borrowing of sixteen millions of dollars.

For this loan the public were invited by advertisement to send in proposals to the Treasury Department. This appeal to the patriotism of the nation proved a lamentable failure, only three millions nine hundred and fifty-six thousand four hundred dollars having been offered. Second notice was published 18th March, 1813.—See Book of Finance, vol. 2, page 646.

Having, for more than ten years immediately preceeding the war, been very extensively engaged in foreign and domestic commerce, I shall not be deemed vain to mention that I considered myself tolerably well versed in the operation and nature of the paper system. Those circumstances determined me to devote a great portion of my time to raising money for the use of government, as I believed it stood more in need of such assistance than of any other which it was in my power to render. I had most cheerfully subscribed to the excellent sentiment of an enlightened states-

man "that the declaration of war had put in requisition the services of every American citizen." At the commencement of hostilities in June, 1812, I had an immense amount of property at sea, and could not form a correct opinion how my affairs would wind up. Although I sustained extensive losses, I still obtained a large amount safe back, which placed my affairs in a favorable train, so that in the March following, when Mr. Gallatin advertised for the sixteen million loan, I was enabled to lend him twenty-five thousand dollars, and prevailed on many of my friends, also, to furnish him with considerable sums. Under this advertisement Mr. Gallatin procured only about four millions. He afterwards repeated his advertisement, offering more favorable terms not only to those who should, before a limited day, subscribe under this new advertisement, but to those who had already subscribed at the banks under such second advertisement; he then repaired to Philadelphia and borrowed the deficiency of Girard, Parish and Astor.

Mr. Gallatin immediately carried into full effect the conditions contained in his advertisement, without enquiring whether they were favorable or unfavorable. His constant study in relation to his contracts was how he could best accommodate all parties. He knew full well that it is the policy of all governments to fulfil their contracts with perfect good faith, and in such a manner as to prevent dissatisfaction, inspire confidence, and invite the aid of monied men towards the accomplishment of public measures. On the other hand, he was sensible that a different course of conduct would occasion distrust, impair the national credit, and detach the wealthy portion of the community from the support of the government at a time when their assistance was not only valuable, but indeed, indispensable to the general welfare.

The success of this loan, and the prospects that a peace would ensue from the Russian mediation, discouraged the opposition, and for a while they appeared to abandon the hope of prostrating the administration by crippling their resources; but the probability of a speedy accommodation with the enemy having diminished, and money becoming more scarce, they derived fresh courage, and again renewed their

exertions to prevent monied men from investing their funds in public stock. It was now evident that the increased expenses of government, together with the rigorous blockade of a principal portion of our coast, would render it requisite for government to resort to another loan to carry on its necessary operations for the year 1813. To accomplish such loan, I considered it would only be required for the friends of government to be active. I was, therefore, diligent in my enquiries upon the subject, and had the satisfaction to ascertain that there were affluent individuals in New York willing to form an association and to tender to government a considerable sum.

To produce so desirable an event became an object nearest to my heart, and as there were many federal merchants willing to embark in such laudable association, I was desirous to induce some character of that description to undertake the agency, lest if I undertook it political prejudices, from my having ever been very active in opposing the party views of the federalists, should operate against the subscription, or lest it should be supposed that I was actuated by the commission of the quarter of one per cent. on the amount of the sum furnished, which government was in the habit of allowing to the agent by whom subscriptions were obtained, and thereby lose my influence with individuals who had the ability to subscribe. This compensation would be dearly earned by the responsibility that would attach on the agent, and doubtless, stimulate me, or any other man of ordinary prudence, to great exertions; and when earned, we should insist with the same pertinacity on receiving it, as on the return of money lent.

With this view of the subject, I applied to Oliver Wolcott, esquire, of New York, opened the affair to him, and pressed him with considerable earnestness to undertake the agency. I promised, if he did so, to procure subscriptions for him to a large amount. He applauded the zeal which was manifested, and said he would think of the matter. In a few days, however, he not only declined the agency, but even to become a subscriber, alleging that it might interfere with existing arrangements between Mr. Astor and the government. I then applied to Augustine H. Lawrence, esq.,

and pressed the agency on him, after some consideration, he also declined.

My solicitude for the service to be performed, was strengthened by the increased violence of the opposition and the confidence which they felt in being able to prevent the government from obtaining money; and my want of success with the gentlemen to whom I had applied at length determined me to take the agency. I accordingly opened a subscription book, and with much exertion and pains succeeded in procuring the following subscribers to the loan to be offered the United States :

John Rathbone & Son	-	-	-	\$20,000
Jacob Barker	-	-	-	100,000
James Lovett	-	-	-	25,000
Gabriel Havens	-	-	-	10,000
John Bullus	-	-	-	10,000
Brockholst Livingston	-	-	-	20,000
John Mason	-	-	-	5,000
Stephen Whitney	-	-	-	10,000
Freeman Allen	-	-	-	25,000
Thaddeus Phelps	-	-	-	10,000
John L. Broom	-	-	-	20,000
Smith & Nicoll	-	-	-	20,000
Walsh & Gallagher	-	-	-	10,000
Post & Minturn	-	-	-	50,000
John Howland	-	-	-	50,000
Benjamin Huntington	-	-	-	10,000
Wright & Allen	-	-	-	30,000
Ayer Bremner	-	-	-	30,000
George W. Murray	-	-	-	10,000
Robert Chesebrough	-	-	-	10,000
Jonas S. Roulet	-	-	-	10,000
John Colvill & Son	-	-	-	20,000
Norwood & Austin	-	-	-	10,000
Samuel Tooker	-	-	-	20,000
W. & L. Vandervoot	-	-	-	10,000
Robert Ainslow	-	-	-	10,000
John Icard	-	-	-	20,000
Boorman & Johnson	-	-	-	10,000
Leonard Bleeker	-	-	-	30,000
Thomas H. Smith	-	-	-	10,000
John F. Delaplaine & Co.	-	-	-	10,000
Isaac Clason	-	-	-	500,000
Lawrence & Van Buren	-	-	-	10,000
Theodore Fowler	-	-	-	150,000
Philips Brasher	-	-	-	50,000
Kelly & Morrisen	-	-	-	20,000
Mollan & Rankin	-	-	-	20,000
Teterel & Williams	-	-	-	20,000

Gardon S. Mumford - - -	\$20,000	B. T. Underhill - - -	\$2,000
Benjamin Bailey - - -	10,000	John Leflerty - - -	2,500
Peter H. Schenck - - -	10,000	B. Andasiese - - -	2,000
J. Prall - - -	10,000	Titus & Avery - - -	6,000
Abraham Riker & Co. - - -	10,000	John Russ - - -	4,000
John Clendenning - - -	20,000	Irving & Smith - - -	5,000
Thomas & Peter Stagg - - -	25,000	John Shute - - -	10,000
Joseph Dederic - - -	10,000	Henry W. Bool - - -	6,000
Rensselaer Havens - - -	20,000	State Bank of New Brunswick, N. J. -	50,000
James McBride - - -	10,000	Jeremiah Akerly, jr. - - -	1,200
Peter Murphy - - -	10,000	James Weeks - - -	6,000
Walter Morton - - -	10,000	W. H. Ireland - - -	2,000
John Grant - - -	10,000	Abraham Bishop - - -	25,000
James Thompson - - -	20,000	Jeremiah F. Randolph - - -	10,000
Thompson & Edger - - -	10,000	David Dunham - - -	16,000
Peter Crary, jr. - - -	10,000	H. C. De Rhan - - -	32,300
Louis Larue - - -	25,000	Luther Loomis - - -	5,000
Majahre & Tardy - - -	10,000		
Irving & Smith - - -	50,000		2,400,000
P. & E. Irving & Co. - - -	20,000		
James C. Flack - - -	10,000	A large proportion of my subscribers were federalists. But I did not stop here, I proceeded to obtain additional subscriptions, and made such further arrangements as would enable me to furnish five millions of dollars.	
James Kelso - - -	10,000		
Kelso and Crimp - - -	10,000	Having thus succeeded, I repaired to Washington to perform, what I then considered, the most pleasing duty of my life. I was now enabled to tender to the government of the country which gave me birth a loan of five millions of dollars, at a period when it was in the utmost distress for money, for the purpose of defending the nation against the hostile attacks of a powerful and implacable foe. On the day of my arrival at that place, Alexander C. Hanson, a member from Maryland, and the reputed editor of the "Federal Republican," a newspaper printed at Georgetown, Columbia, delivered a very violent speech in Congress, in which, among other things, he stated that the government was destitute of funds, and unable to procure a single million in all America; that the merchants would refuse to make further advances; and that the administration had already obtained the last dollar in the power of its friends to furnish. He also ventured to declare, that gentlemen who had lent were sick of their bargain and had been deceived by the fallacious assurances of Mr. Gallatin that peace would arise from the mission in which he was employed, and in the fulfilment of the duties of which he was on the point of embarking for Russia. Mr. Hanson, in this speech	
Bernard Keenan - - -	4,000		
Garrit Storm - - -	10,000		
Gamaliel Smith - - -	20,000		
Jase. & W. Dunlap - - -	10,000		
Austin & Andrews - - -	20,000		
Jonathan Lawrence - - -	23,000		
Samuel Stillwill - - -	10,000		
Van Horn & Morris - - -	5,000		
Isaac Lawrence - - -	25,000		
Nicolo Senchich - - -	40,000		
Leonard Bleeker - - -	20,000		
Henry A. & John G. Coster -	100,000		
John Grant - - -	20,000		
Peter Feviere - - -	10,000		
Joseph Burr - - -	6,000		
Bradhurst & Field - - -	5,000		
F. Wildman - - -	4,000		
James Van Oyke - - -	5,000		
S. M. Thompson - - -	10,000		
Q. & S. Wildman - - -	6,000		
John & Jacob Drake - - -	10,000		
John H. Douglas - - -	4,000		
Philip S. Lebreton - - -	6,000		
Mehitable Hunting - - -	4,000		
Samuel Watkins - - -	5,000		
W. Holly - - -	5,000		
Jacob M. & John M. Hicks -	2,000		
Bank of Wiscasset - - -	75,000		
James Townsend, B. T. U. -	2,000		

continued to allege, that his information was derived from the best informed merchants in America, and that he was sensible he could not be mistaken.

An alarm of that nature had, indeed, generally prevailed. It was apprehended that the government would not be able to procure resources to supply its necessities, or to prosecute its measures. Congress itself appeared dejected at the gloomy prospect which was presented. In the evening, I met with the honorable Messrs. Cheaves and Calhoun, of South Carolina, and Doctor Bibb, of Georgia, the latter a member of the committee of ways and means. In the course of conversation, I took occasion to mention the business which had brought me to Washington. He appeared highly pleased, and requested my permission to state the facts on the floor of Congress, in a reply which he, the next day, intended to make to Mr. Hanson's speech. I told him that I had not the smallest objection to his stating that an agent had arrived from New York, deputed by a large number of merchants, without any political distinction, and authorized to tender to government a loan of several millions of dollars. On the next day he, accordingly, made such a statement, which afforded the utmost satisfaction to the Republican members, and filled the opposition with astonishment and alarm.

However surprising it may appear, it is not the less true, that neither party in Congress had been apprised of the association which I had succeeded in forming. The information was received with the greatest emotions, and the pleasures and regrets of that day will not be soon effaced from the recollection of the members who were present. Mr. Bibb is said to have rendered the utmost justice to the subject.

Ignorant that he had afforded such statement, shortly after the conclusion of his speech, I attended in the gallery of the House, accompanied by my father-in-law, Thomas Hazard, jun., where we were met by several of the members, who were all anxious to learn the particulars of the business, of which I informed them without hesitation. Among the number were Elisha R. Potter, a Federal representative from Rhode Island, and Judge Benson, a Federal member from New York; they appeared distressed at the prospect of the administration obtaining

money to carry on the war, and expressed an anxiety to ascertain the names of the federalists who had lent themselves for such purposes. I readily mentioned the most conspicuous characters among them, whom I knew him to be acquainted with, and added, that if they would call at my lodgings, they might examine the subscription book, where they would discover the signatures and names of many of their particular friends. They promised to do so, and we parted.

Immediately after this, I became an object of denunciation, calumny, and persecution. The Federal papers were let loose upon me. The Federal Republican, at Georgetown, commenced the attack, which was followed throughout the eastern States, and even extended to the three penny sheet which is printed at the village of New Bedford. Several other of the towns in Massachusetts united in the warfare against an individual whose only offence was a performance of his duties to his country. The "Federal Republican," in particular, with the liberality for which it is so justly distinguished, proceeded to the length of declaring me an impostor, and insinuated that the names of my subscribers had been forged. The honorable Rufus King, a Federal senator from New York, called upon me, and requested to see the book of subscriptions, to which I consented without hesitation. After having examined it, he mentioned that the association was highly respectable; that among the subscribers he found many of his particular friends, whom he knew to be abundantly able to perform all the engagements into which they had entered. Such decided testimony, however, was unable to shield me from slander. Many of the Federal members became extreme in their violence of hatred, and others attempted to intimidate me with respect to the safety of the money to be lent. Mr. Potter, a representative from Rhode Island, declared with great seriousness, that the Federal party would soon possess the powers of the government, and would never consent to impose taxes on the people to pay either the principal or the interest to carry on such a war.

I had not repaired to Washington to obtain information, or to be schooled by individuals whose experience and acquaintance with the subject was not superior to my own. The only effect produced by such conduct was, if possi-

ble, to strengthen my determination, and to increase my activity and zeal in supporting the administration. I accordingly waited on the acting Secretary of the Treasury, and tendered to him a loan of five millions of dollars, on the same terms as government had allowed for the sixteen million loan, observing, that although better terms might be obtained, we had determined to offer the money on such conditions as had recently been agreed to by the government.

The acting Secretary replied that, inasmuch as no law authorizing a loan had as yet passed, he could not say anything decisive on the subject. In the course of a day or two afterwards, a bill to authorize a loan was introduced; while it was under debate in the Senate, the honorable Mr. King presented a resolution calling for the documents and papers in relation to the terms on which the sixteen million loan had been obtained. He stated, with great earnestness, that the most injurious conditions had been allowed, and that when papers came to light a more disgraceful transaction would appear than had ever been witnessed in the treasury department of any country.

On taking his seat, he was asked by Jeremiah Mason, a senator from New Hampshire, how he obtained his information? he replied "from Mr. Sheldon, of the Treasury."

Mr. Barker and Mr. Hazard were in the gallery and heard this conversation; the former being a subscriber to the amount of \$25,000 to Mr. Gallatin's loan, supposing himself, from the tenor of the advertisement for the loan, interested in the secret article, repaired immediately to the Treasury department and inquired of Mr. Sheldon how he came to allow Mr. Gallatin to make such a disgraceful contract with Messrs. Girard and Parish.

Mr. Sheldon replied, that Mr. Gallatin was a thousand miles off before he found it out, and then by accident he came across the paper which had been endorsed and filed away by Mr. Gallatin himself, no doubt for the purpose of concealing it from the treasury clerks.

Mr. Barker inquired of him if it was kind in him to expose the article to the political opponents of Mr. Gallatin, to be used against him in his absence; "yes," added Sheldon, "the good of the country requires it, the administration are incapable to conduct the affairs of the

nation, and the sooner they are made to resign the better."

About this time there was an intrigue on foot to induce the President to dismiss his cabinet ministers, or a great part of them, appointing in their places his political opponents. Seven or eight Democratic members of Congress from New York, alarmed at the progress of the war and the condition of the treasury, had subscribed an address to the President to that effect.

These men were led on by Jonathan Fisk, a member from Orange county, New York, and were opposed by a greater number of the New York democratic members, at the head of whom was John W. Taylor, a member from Saratoga, New York.

Mr. Barker, having an intimacy with Mr. Madison, had something to say on the subject; this new device to distract and destroy the party did not succeed.

The Federal party had opposed a proposed land tax, because the Democratic party would not reinstate the old Federal land tax; on that occasion, the Hon. Mr. Eppes, of Virginia, chairman of the committee of ways and means, said, the House would never agree to reinstate that law; the Democratic party had trouble enough to get rid of the odious tax when it was not wanted; it was now wanted, and he would vote for it for one year and so on annually, and as long as it should be wanted, but the House would not again lose the power of saying when it should cease, which would be the case if made dependent on the vote of the Senate, or the veto of a President. I consider Mr. King to be a man of too much intelligence and honor to have rested an accusation upon so groundless a basis, had he been acquainted with its imbecility; and, therefore, I still retain the impression, that he had been induced to attach more weight to the information of Mr. Sheldon, than it was afterwards found to merit.

Mr. King's resolution was as follows:

"Resolved, That the President of the United States be, and he is hereby, requested to cause to be laid before the Senate the terms upon which the loan made in pursuance of 'An act authorizing a loan for a sum not exceeding sixteen millions of dollars,' passed the eighth day of February last, has been obtained or contracted for, together with a copy of such contract."

The resolution was unanimously passed on the 26th of July, 1813.—(See Journal of the Senate for 1813, page 352.) Responded to, (Book of Finance, vol. 2, page 647,) being a letter from David Parish and Stephen Girard, accepted by Mr. Gallatin, in words and figures following:

“PHILADELPHIA, April 5, 1813.

“In consequence of the notice given by the Treasury Department under date of the 13th of March, 1813, that proposals will be received by you for the whole or part of the residue of the loan of sixteen millions of dollars, we herewith beg leave to offer to take as much stock of the United States, bearing interest at six per cent. per annum, payable quarter yearly, the stock not to be redeemed before the 31st December, 1825, at the rate of \$88 for a certificate of \$100, as aforesaid, as will amount to the sum of eight millions of dollars, or to the residue of the said loan, providing you will agree to allow us the option of accepting the same terms that may be granted to persons lending money to the United States by virtue of any law authorizing another loan for the service of the year 1813 that Congress may pass before the last day of the present year.

“With regard to the payments of the instalments on the amount to be loaned by us, we shall expect to enter with you into such arrangements as will be mutually accommodating.

“We are, with high regard, sir, your most obedient servants,

“DAVID PARISH,
“STEPHEN GIRARD.

“To Hon. ALBERT GALLATIN,
“Secretary of the Treasury.

“To be paid at Stephen Girard's bank. Stephen Girard for self and David Parish.”

When this report from the President came into the Senate it was manifest that it had been made necessary to enable the treasury to get the money, and intended to have been kept a secret pending the period it had to run, lest it should affect the price of stock. It was an indemnity to the lenders which all governments have to make to support the price of their stocks.

The acting Secretary of the Treasury in his report of the terms on which this loan was obtained, and the finances of the treasury generally, made to Congress on the 2d June, 1813, does not mention the condition, or in any way refer to it.

That part of the transaction alluded to by Senator King, and with respect to which he had been evidently misinformed, appeared upon

investigation to amount to nothing more than this precise condition allowed by Mr. Gallatin to Messieurs Girard and Parish, to wit: that if any more favorable terms should be allowed by the United States for money borrowed under any law which should be passed before the last day of that year to defray the expenses, that they should have the benefit of such more favorable terms.

The perusal of the documents rendered it further evident that every possible exertion had been made by Mr. Gallatin to obtain money without granting such a condition, but without success, and that no alternative had remained except either to allow the condition required or become unable to procure the money.

So well satisfied was Mr. King, and every other member, of the propriety of Mr. Gallatin's conduct, that after the documents had been read not a single word of complaint was uttered in the Senate.

My impression then was that Mr. Sheldon had barely communicated his own opinions of the transaction to Mr. King, without mentioning to him the precise nature or terms of the contract, or other circumstances upon which those opinions had been formed.

On the 2d of August, 1813, a law was passed authorizing a loan of seven millions and a half of dollars.

I immediately afterwards waited on Mr. Jones, and repeated my offer to loan five millions upon the same terms which were allowed for the sixteen million loan. He was friendly and polite, but declined to enter upon any decision for some days, and intimated that he expected to obtain it on better terms, and should probably advertise for it. He did so, and when I offered two millions, and my friend, Fitz G. Halleck, of New York, an additional four hundred thousand dollars in my behalf, a greater amount than seven and a half millions having been offered, only seventeen hundred and twenty three thousand dollars of the two millions four hundred thousand offered by us were accepted, this amount of money was promptly furnished.

The “Federal Republican” and other newspapers were severe and lavish in their censures against those federal merchants of New York who were advancing their monies to government to support such a war.

Shortly after the seven and a half million loan was closed, money became more scarce, and the wants of government appeared to increase. The alarm that it would not be able to obtain resources became general, when the solicitude I felt for the success of our arms induced me to meet and consult with several of my acquaintances for the purpose of devising some plan to render efficient and acceptable aid. Upon such consultation, we coincided in opinion that the establishment of a national bank would be the most beneficial measure which government could adopt to procure funds and to place its finances in a flourishing situation. A petition to Congress for such an institution was accordingly prepared. I presented it to many of our wealthy citizens, without distinction of party, and obtained their signatures. In making this application, John Wells, esq., a distinguished federal lawyer of this city, was very active, and, with pleasure, I take this occasion to remark, that I consider him one of the most enlightened and honorable men in America, and one that would make as great sacrifices as any man to promote her best interest. Copies of it were transmitted to Boston, Philadelphia, Baltimore, Norfolk, Charleston, and Savannah, requesting a co-operation, which succeeded at Philadelphia, but not at the other places. Two petitions, one from the latter place, and the other from this city, were presented to Congress. I repaired to Washington in January, 1814, and remained there until after Congress adjourned, endeavoring to convince the members of both houses that, without the establishment of a national bank, government would be unable to obtain a sufficiency of money for necessary public purposes. Many of the members concurred in the same opinion, and endeavored to procure the passage of a law for such establishment, but all their efforts proved unavailing.

I waited on the President, the Vice President, the Secretaries of State, the Treasury, of War, and of the Navy, and, by the strongest and most impressive arguments in my power to suggest, represented the impossibility of borrowing sufficient sums to answer national exigencies, and that if Congress should adjourn with a reliance upon loans they would be awfully disappointed. I frequently heard the late Vice President and the late Secretary at

War converse with members of Congress upon the subject. They both repeatedly expressed their opinion that if Congress should adjourn without establishing a national bank that the President would be under the necessity of convening them in a few months for the express purpose of providing ways and means. Mr. Campbell, the new Secretary of the Treasury, entertained also serious alarms with respect to the inadequacy of the means which had been adopted to call forth the public resources, and used every argument in his power with the committee, and with individual members, to induce their exertions in favor of a bank. Being unsuccessful in relation to this measure, and believing that by prohibiting the exportation of specie the existing banks would be enabled to loan large sums, and that the public interest, for other reasons, required such prohibition, the measure was recommended by the President in a message to both houses of Congress. The subject was debated in the House of Representatives, and not agreed to; immediately after which Mr. Campbell applied to members of the Senate, and pressed upon them the necessity of the measure, when it was taken up in that body, and disagreed to by them.

Most of the federal members in Congress opposed the establishment of a national bank with great vehemence. Some of them took occasion to reprobate the petitioners in its favor, and Dr. Seybert, of Philadelphia, a republican member, who was upon constitutional grounds averse to the measure, appeared to unite in the censure. He intimated that the alleged difficulty of procuring money was made as a threat with a view to coerce Congress to consent to it. Such insinuation I considered unkind. Nothing could be further from the fact. I had expressed my real opinions to that gentleman with perfect sincerity. The information I had afforded him and others, that money could not be borrowed, was not grounded on a reason that the possessors would withhold it for the purpose of compelling Congress to institute a bank, but because the money market was exhausted—because many commercial men were averse to loaning, and were equally averse to a bank, inasmuch as they knew it would furnish the government with means to borrow as much money as was

wanted, and, thereby, defeat the prospect of obtaining a new administration by embarrassing the operations of the present. I conversed with some of the federal members on the subject of a national bank, they observed that if the charter of the old bank had been renewed the government would have had a plenty of money; so far from this opinion being well founded, they would not have been able to have borrowed so much money from the old bank as they have borrowed of existing banks, who have been induced to loan it in consequence of having the benefit of the business of government, which they would not have had if the old bank had been continued, the whole circulation of the country would have been occupied by its notes and its capital lent to those who could not return it during the war; whereas the whole, by the establishment of the new bank, could be converted to the use of the government. The government would not, at this time, have had the power to relieve itself by the establishment of a national bank. The opinions which I then entertained were expressed in a letter written by me to the Hon. John Tayler, at Albany, the lieutenant governor of the State of New York, requesting his influence with the New York legislature to pass a law conveying to Congress the right of establishing a national bank in our city, believing that such a law would remove the constitutional objections to such an establishment, of which letter the following is an extract:

"I have been here about one month applying for a national bank, in which I shall probably be successful, as all seem convinced such an establishment would be of very great assistance to government, and there is not any truth of which I am more thoroughly convinced than that without a national bank it will be impossible for government to procure on loan the present year one half the money which will be indispensably necessary to conduct the war with effect, and preserve the honor of the nation, and nothing will be so injurious to the nation, and so effectually prostrate the republican party at the feet of our opponents, as for our resources to fail, it will cause the war to languish, and the troops to be withdrawn from the field."

On the 24th of March Congress passed a law authorizing the President to borrow twenty-five millions of dollars. It was advertised for, to be closed on the 2d of May.

I procured a communication to be inserted in

the National Intelligencer, in which I endeavored to prove that it was not possible to borrow more than seven and a half millions in the United States, and that it would, therefore, be exceedingly unwise for Congress to adjourn without making further provision.

The spring campaign was opening, the whole frontier exposed to the incursions of the Indians and assaults of the British, who were burning our frontier towns, and our coast partially blockaded. Notwithstanding, Congress adjourned the latter part of April, ignorant of the fate of the loan so soon to be decided, and without making other provision for the success of the war.

Before leaving New York I had exerted myself to the utmost of my power to form an association to furnish the government with more money, and procuring the following subscriptions:

Isaac Lawrence	-	-	-	\$25,000
Fred. De Peyster	-	-	-	25,000
John Rathbone, jr.	-	-	-	25,000
Francis Depau	-	-	-	20,000
James Lovett	-	-	-	20,000
Edmund Edmendorf	-	-	-	5,000
Wm. P. Van Ness	-	-	-	25,000
Walter Morton	-	-	-	10,000
Benj. Huntington	-	-	-	10,000
Walter Bowen	-	-	-	20,000
Wm. Van Ness	-	-	-	20,000
Alex. Ferguson	-	-	-	200
Edmund Elmendorf	-	-	-	5,000
David Delapierre	-	-	-	3,000
Philip S. L. Breton	-	-	-	10,000
John L. Broome	-	-	-	20,000
Frederick Brune	-	-	-	15,000
James R. Wilson	-	-	-	30,000
John Icard	-	-	-	10,000
Earl De Pearce	-	-	-	5,000
Isaac Jones	-	-	-	4,000
John M. Hicks } Hicks }	-	-	-	2,000
				<hr/> 309,200 <hr/>

Although this loan was to be closed on the second of May, Congress adjourned on the latter part of April, totally ignorant of the fate which would attend it, without making any other provision for the prosecution of the war. It was the universal opinion of the nation that it could not succeed, and I do not believe there was one solitary individual, acquainted with the

state of the money market, who believed that the whole ten millions could be obtained on any terms whatever. The Republican party felt the greatest dejection on this account. I had opened a subscription book in New York, but had not yet procured two hundred thousand dollars to be subscribed. On the other hand, leaders of the Federal party were very much elated by the prospect of the loan's failing. To insure such failure, and to produce that state of public embarrassment which they so much desired, their speeches in Congress, and in the several State legislatures, together with their publications in the newspapers, were directed to that end. The Boston brokers and stock-jobbers acted their part in the plot with the utmost industry, by running on the New York banks for specie, by offering stock at auction, by making sham sales, and by bidding it off to each other with no other view than to depreciate and disgrace it; at this time I held a large amount of public stock, the sale of which became necessary to enable me to furnish the government with more money. I visited Washington, had several conversations with the Secretary of the Treasury on the subject of the proposed loan, informing him that I intended to offer a half million of dollars at 85, requiring the same condition that had been allowed Messrs. Girard and Parish; he expressed a wish to obtain the money at 88, the same rate as Mr. Gallatin had allowed; he thought such a contract would induce an immediate peace, in which case the stock at 88 would be a good speculation; and if the war should be continued, the condition, if allowed, would protect the holders of the stock, adding that the President had received a confidential letter from Mr. Gallatin, one of the peace mission under the Russian mediation, saying, that the British ministry had advice from their friends in the United States, that it would be impossible for the Washington administration to obtain a sufficiency of money to conduct another campaign; that if they would defer negotiations for peace, Mr. Madison and his cabinet would have to resign, their friends come into power, with whom a peace could be negotiated on more favorable terms. Therefore, the Secretary urged the necessity of a contract for a loan at old rates.

Mr. Barker never believed that if the Federal

party had got into power they would have made any dishonorable concessions to Britain; all they wanted was the control of the government and a division of the spoils; those objects attained, he believed they would have been as tenacious of the nation's honor and rights as the Democratic party.

Congress adjourned after passing a law authorizing the issue of treasury notes and a loan of twenty-five millions; the treasury department invited, by advertisement, proposals for 10 millions in part; a greater sum was wanted, but the Secretary was apprehensive that if he advertised for a larger amount, it would militate against offers, and so he stated in his report to Congress.—See book of Finance, vol. 2, page 841.

When Mr. Gallatin contracted at 88, the market price was 90 to 91, at this time it was down to 85 to 88; it is the universal custom when governments contract, to do it at a rate several per cent. below the retail market price, yet the considerations urged by the Secretary induced Mr. Barker to offer at 88, addressing to the Secretary a letter in words and figures following:

“WASHINGTON, 4 Mo. 28, 1814.

“RESPECTED FRIEND: I will loan to government five millions of dollars, and pay £75,000 sterling of it to their bankers in London, on or before the 10th of December next, to be estimated at the current rate of exchange at Philadelphia, on the 15th day of July next, and the balance I will pay at the periods mentioned in thy advertisement of the 4th April, to their credit, in such banks of the United States, as may be agreeable to thee.

“On the payment of each installment, funded stock to be issued for one hundred dollars for each eighty-eight dollars received. It being understood and agreed, that if terms more favorable to the loaners be allowed for any part of the twenty-five millions authorized to be borrowed the present year, the same terms are to be extended to this contract; and that such incorporated banks as may assist me in carrying this contract into effect shall have the business of government at the places of their establishment, especially the collection of bonds given for duties and other custom-house deposits, thee being first perfectly satisfied as to their solidity and capacity to do the business well, and to retain the right to take it from them, or either of them, the moment thee may doubt as to the solidity of such bank or banks. The notes of such of those banks as may be established in New York, Boston, Philadelphia, and Baltimore, to be received by all the col-

lectors of the customs or imposts, and of internal taxes, and by all land officers the same as specie, for which purpose, instructions to be given, immediately, from the proper department. The notes of no other bank, out of the district where the collection is made, to be received in such payments. If there is no bank in such district, the notes of one other bank may be received in such payment. Each collector, or other officer who receives the notes of any of the aforesaid banks, to remit them weekly to the banks who issued them, to be by them placed to the credit of government the same as specie deposited, their receipt to be stopped the moment thou doubts the solidity of the banks issuing them.

"For the amount payable in London, funded stock to be issued, bearing interest from the fifteenth day of July, and delivered to me on my giving satisfactory security that the money shall be punctually paid. The rate of exchange to be settled, on that day, by the presidents of any three banks in Philadelphia which thou may name.

"A commission of one quarter of one percent. to be allowed me on the amount loaned.

"With great respect and esteem, I am thy assured friend,

"JACOB BARKER.

"The honorable GEORGE W. CAMPBELL,
"Secretary of Treasury."

The Secretary, after consideration, returned the letter to me, saying, that he could not take from the banks which had hitherto accommodated government the whole of the public business, and that he was not willing to give so extensive an order to the collectors, but that if he could not get the money otherways, he might extend a reasonable proportion of the public business to other banks, and that he did not see any objection to ordering the principal banks with which the treasury did their business to receive from the collectors the notes of some of the principal banks in the large cities, which would answer all the purposes contemplated by me, as the collectors were already ordered to receive all such bank notes for duties and taxes as the banks where they made their deposits would receive as money, saying, that if the money should be offered without the condition for further benefit on admissible terms, he should not agree to any condition not expressed in the treasury advertisement, yet as it might not be offered unconditionally, he desired me to make new proposals, separating the offer of loan from that requiring the patronage for the banks, and in stating the patronage requisite to enable me

to procure five millions, he desired me to require as small a portion as possible, as he was solicitous to favor the banks which had hitherto accommodated government. He observed, that he did not perceive any objection to receiving a part of the money in Europe, as the government would be under the necessity of purchasing bills to remit in July or August, if they did not receive a part of it there. Pursuant to his request, I separated my proposal, and asked for only half the public business, and adopted his plan in relation to the banks receiving the notes of other banks in lieu of the collectors receiving them, as appears more fully by the two letters I delivered to him on that subject, of which the following are copies:

"WASHINGTON, 4 Month 30, 1814.

"ESTEEMED FRIEND: Enclosed I hand thee a proposal to loan five millions of dollars. In case it should be accepted, it is to be understood that such incorporated banks established at Salem, Boston, New York, Philadelphia, Baltimore and Charleston, as should assist me in carrying it into effect, shall have one half the business of government, especially the collection of bonds given for duties and other custom-house deposits, thee being first perfectly satisfied as to their solidity and capacity to do the business, and to retain the right to take it from them, or either of them, the moment thee may doubt as to the solidity of such bank or banks. The notes of such of those banks as may be established in New York, Boston, Philadelphia and Baltimore, to be received the same as specie by all the banks with which government may do business at New Orleans, Savannah, Charleston, Norfolk, Baltimore, Wilmington, Delaware, Philadelphia, New York, and in the New England States, for which purpose instructions to be given from the proper department. Each bank which receives the notes of any of the aforesaid banks, to place them to the credit of the bank that issued them. The amount to be by such bank placed to the credit of government, from time to time, on a presentation of a certificate of the amount thus placed at their disposal; the receipt of any or all such notes to be stopped the moment thee doubts the solidity of the banks issuing them. I confidently hope to procure all the assistance I shall require from the bank of America in New York, and one of the most respectable banks at Boston. My wish is to confine all the operations to one or two banks.

"With great respect and esteem, I have the honor to be, thy assured friend,

"JACOB BARKER.

"The honorable G. W. CAMPBELL,
"Secretary of Treasury."

"WASHINGTON, 4 Mo., 30, 1814.

"RESPECTED FRIEND: I will loan to government five millions of dollars, and pay seventy five thousand pounds sterling of it, to their bankers in London, on or before the tenth of December next, to be estimated at the current rate of exchange at Philadelphia on the fifteenth day of July next, and the balance I will pay in the proportions, and at the periods, mentioned in thy advertisement of the 4th of April to their credit, in such banks of the United States as may be agreeable to thee.

"On the payment of each instalment, funded stock to be issued for one hundred dollars for each eighty-eight dollars received. It being understood and agreed, that if terms more favorable to the loaners be allowed for any part of the twenty-five millions authorized to be borrowed the present year, the same terms are to be extended to this contract.

"A bond with suitable penalties to be executed for the faithful performance of this contract.

"For the amount payable in London, funded stock to be issued, bearing interest from the fifteenth day of July, and sent to your bankers there, to be delivered to my order, on my paying to such bankers the amount in money, or to be delivered to me here, on my furnishing approved endorsed bills on London. The rate of exchange to be settled on that day by the presidents of any three banks in Philadelphia, which thou may name.

"The commission of one quarter of one per cent., mentioned in thy advertisement, to be allowed me on the amount loaned.

"With great respect and esteem, I am thy assured friend. "JACOB BARKER.

"The honorable GEORGE W. CAMPBELL,
"Secretary of the Treasury."

These letters, bearing the treasury endorsement, remain in my possession.

On presenting the preceding letters, I observed to the Secretary, that if the whole amount which was advertised for should be unconditionally offered on terms anything like the market price for stock, that I was of opinion the public interest would be promoted by making an unconditional bargain for it; but if it should not be unconditionally offered, that I was confident I could furnish five or six millions, provided the banks from which I expected to borrow were favored with the patronage required; as all banks were desirous of transacting a portion of public business, and the advantages of having their notes received for the taxes and duties throughout the United States, would induce them to make very great loans, the amount of such loans to be received

in their paper, sent to the army, and used to pay the debts of government, and not drawn out and placed in other banks. Such an arrangement would give the banks the ability, as well as the disposition, to loan large sums. We had several subsequent conversations, in which he fully agreed with me in opinion, that the proposed patronage in favor of the banks would enable me to furnish the money, and felt apprehensive that he could not obtain it by any other means; he was, however, unwilling to take so great a portion of the public business from the banks which had already assisted government. After the consideration of a day or two, he returned me my proposal, endorsed in his own hand writing, requesting me to make a specific proposition of the amount I was willing to engage to furnish, omitting the subject of paying a part in England; adding, that he would afford me an opportunity of paying the amount mentioned in England; and that he would allow such banks as should assist me in particular places a portion of the public business, not to exceed one third, for two years, and to order the notes of some of those banks to be received in the manner I had suggested. He presented me with a memorandum to that effect, and handed back to me my letter requiring patronage for the banks, endorsed with his own hand writing, observing that he did not wish it to form any part of our contract, lest some of the other subscribers might complain of partiality inconsistent with the promise which the advertisement contained; that he would give it as a free will offering; that government always had and would accommodate and favor with their patronage such banks as accommodated them; and that, although he would not engage for more than two years, it was not probable that the government would have any disposition to change at the end of that period, provided the business was conducted to satisfaction, and at all times the Treasury Department must be at liberty to close their accounts with such banks, even before the expiration of the two years, in case the banks should not conduct with propriety, or in case government should deem its funds insecure in their hands, adding that the principal part of the money would be expended by the War and Navy Departments who were, also, disposed to do all they could in promoting the circulation

of the paper of the banks who loaned money to government. To this I replied, that as it was known I could not furnish any money without the patronage of government, I should not object to leaving it out of the contract on such an understanding, provided I was not subjected to any forfeiture. The Secretary rejoined, that government had never demanded or exacted forfeitures in such cases, and would not do it if parties acting in good faith used their best endeavors to fulfil their engagements. I again replied, that if the government accepted of my offer they had only to decide upon giving the patronage or go without the money; for it was a fact that all my funds were already invested in former loans; that it was out of my power to obtain much from individuals; and that the different banks could not accommodate without the patronage required, from which they would expect to derive the power.

The Secretary expressed a wish, that for each instalment paid I should consent to receive scrip in the ordinary way; to this proposition I objected, as being totally impracticable for me to perform. He then requested me to state in my letter, "that on the payment of each instalment, and satisfactory assurance for the payment of the others, funded stock to be issued"—instead of saying, "a bond with suitable penalties to be executed for the faithful performance of this contract." I assented to the modification waving the stipulation for security, repeating that I wished him distinctly to understand that I was incapable of doing anything without funded stock for each instalment, as fast and as soon as the money was furnished, and that it was perfectly immaterial in what terms my letter was expressed, provided the stock was so furnished.

Government had ever been in the habit of confiding, without security, in the promise of contractors for the payment of the first instalment; it therefore appeared reasonable that they should extend the same confidence with respect to the other payments—as by the payment of one instalment with fidelity they had entitled themselves to consideration.

We separated without concluding the business; when we again met he informed me that Mr. Sheldon was much averse to the proposed arrangement; that it would give the clerks

trouble in keeping their accounts; for these and other reasons he repeated that he was not willing to agree to any positive stipulations which should bind the government to give their patronage to my particular banks; but as government possessed the right of bestowing its favors upon any institution it pleased, advised that it should be received as a free will offering. I replied that, if the banks obtained the patronage required, it was perfectly immaterial to me whether it flowed from an honorable understanding, or was secured by an absolute contract, but that, at all events, I could not obtain the money without it; adding that high minded men are, if possible, more solicitous to fulfil their engagements of honor than even their written promises; but that, however I might feel disposed to rest upon such an understanding, the banks would not be so well satisfied without an absolute contract. Mr. Campbell replied that he had made such explanations as he supposed would satisfy me, and requested me to take the matter into consideration. I promised to do so, and we parted. When I waited on General Armstrong the Secretary of War exhibited to him the memorandum I received from Mr. Campbell, and requested his opinion in relation to the probability of obtaining the solicited patronage, provided the expressed condition which had been required for that purpose was waived, and whether his officers would circulate the bills of such banks as should loan the money? He mentioned that they always drew out and circulated the bills of those banks on which the warrants were drawn, and that he would see and converse with Mr. Campbell on the subject. He did so, and subsequently informed me that Mr. Campbell had expressed his willingness to give all the assistance in his power to the persons who should lend the money—mentioning that the government had always given their business to the banks which accommodated them, and would continue to do so; but as the present banks could not furnish all the money which the public would require, it might be necessary to give a portion of the patronage to other banks, who should make further loans, and that he should consider a bank loaning any part of the five millions to me the same as loaning it direct to the government, as it was not to be imagined that I was able to lend

five millions of dollars unless I obtained them from others; he was, therefore, of opinion that I should not be disappointed if I left the business at the discretion of the Treasury Department, but added that he had not anything to do with it, and that I must act according to my own judgement; whereupon I delivered to Mr. Campbell a letter bearing the date of my original proposition in words and figures following, observing to him, as you have already got all my money, if you accept this proposition its fulfilment will depend on your affording the banks who may assist me the required patronage.

"WASHINGTON, 4th month, 30, 1814.

"RESPECTED FRIEND: I will loan to the government of the United States five millions of dollars, receiving one hundred dollars in six per cent. stock for each eighty-eight dollars paid, and will pay the money in the proportion, and at the periods mentioned in thy advertisement of the 4th of April, to their credit, in such banks in the United States as may be agreeable to thee.

"On the payment of each instalment and satisfactory assurances for the payment of the others, funded stock to be issued—it being understood and agreed, that if terms more favorable to the loaners be allowed for any part of the twenty-five millions authorized to be borrowed the present year, the same terms are to be extended to this contract.

"The commission of one quarter of one per cent. mentioned in thy advertisement to be allowed me on the amount loaned.

"With great respect and esteem, I am thy assured friend,

"JACOB BARKER.

"The Hon. G. W. CAMPBELL,
"Secretary of the Treasury."

After I presented this letter, Mr. Campbell repeated that the patronage required should be afforded, but it must be considered as a free will offering, lest some exception might be taken on account of the terms of his advertisement.

On the morning of the day on which we contracted, he informed me that he had concluded to accept of my offer, with a slight variation, allowing the holders of stock, when more favorable terms should be allowed, the benefit thereof, in place of making that allowance to the contractors.

I replied with great earnestness, that if he accepted of my offer, he must make the allowance to the contractors for the loan, and not to the holders, unless they should continue to

hold it, to which he objected. I then, in the most forcible manner in my power, urged the reason why such allowance should not be made to the holders of stock, mainly because it might operate as an inducement for them to depreciate the value, alleging that when persons purchase stock for the purpose of holding it the cheaper it can be obtained the better; but when they purchase it to sell again it is for their interest to keep it up at as high price as possible; that it was the same with respect to stock as with every article of merchandise; when high it is demanded and of brisk sale; when low, sales are extremely dull, and when on the decline almost impossible to be disposed of.

The Secretary of War and the Comptroller were present at such conversations. We again parted without coming to any final determination.

I took occasion to speak to Mr. Sheldon of the imolicy of this course; from his conversation it appeared evident that it was a plan of this treasury clerk, as more likely to defeat me than leaving the benefit of the conditions with the contractors; he stated that he was opposed to every part of the arrangement proposed by me.

You cannot, said he, get the money; the nation is in a lamentable situation; everything is going to destruction; the present administration are incapable of conducting it; the sooner they are made to resign the better; that he would not have anything to do with it; that he had so informed the Secretary; that no other person in the office knew anything about such business, and that, if the Secretary would make such bargains, he must get some one else to carry them out.

I communicated this to the Secretary, and inquired why he did not remove him and appoint another clerk. The Secretary replied that Mr. Sheldon had been so long connected with the office that he was *au fait* with all the details thereof—believed to be very honest. That he, the Secretary, knew nothing about the details of the office, and was too unwell to conduct its business with strangers.

I told him he could not do it with enemies watching over him for evil, eager to convert their position into engines of war against him and his political friends.

Soon afterward I received a note from Mr. Campbell inviting my attendance, of which the following is a copy :

"MONDAY MORNING, May 2, 1814.

"Mr. Campbell would be glad to see Mr. Barker at the Treasury Department, if convenient.

"J. BARKER, esq."

I called, when the Secretary informed me that his mind was unalterably made up to give the benefit of the condition to such persons as might hold the stock when more favorable terms should be allowed, which he said he did not think would ever happen; that peace would, in all probability, take place before more money would be wanted; said he believed the effect on the market price would be more favorable than for it to remain with the contractors; that he had consulted the President and Cabinet; that they all thought that there would not be any difficulty about the required patronage to the banks which should aid me; that they were all anxious for the loan to be contracted for at 88.

The war had been induced by the orders in council, impressment of our seamen, paper blockades and some minor offences; the orders in council had been rescinded, and peace messengers had been sent out with instructions to defer the other causes of complaint; hence the great confidence of the administration that we should soon have peace. Considering that future opposition would be unavailing, I reluctantly yielded, when the Secretary delivered to me a letter in words and figures following :

"TREASURY DEPARTMENT, May 2, 1814.

"SIR: The terms upon which the loan has been this day concluded are as follows, viz: Eighty-eight dollars in money for each hundred dollars in stock; and the United States engage, if any part of the sum of twenty-five millions of dollars, authorized to be borrowed by the act of the 24th of March, 1814, is borrowed upon terms more favorable to the lenders, the benefit of the same terms shall be extended to the persons who may then hold the stock, or any part of it, issued for the present loan of ten millions.

"Your proposal of the 30th of April for five millions of dollars of the loan having been at the above rate, or at a rate more favorable than the above to the United States, has been accepted; and you will please to pay, or cause to be paid, on the 25th day of the present month, into the bank or banks you have named, or into such as you shall name to the Secretary of the Treasury on the receipt of

this letter, twenty-five per cent., or one fourth part of the sum above stated, pursuant to the notification from this department of the 4th of April last, and the remaining instalments on the days fixed in the said notification. You will be pleased, also, on or before the 25th of May, to furnish the cashier or cashiers of the bank or banks where the payments under your proposal are to be made with the names of the persons in whose behalf the proposal has been made, and the sums payable by each.

"The commission of one-fourth of one per cent. will be paid from the treasury, after the payment of the first instalment, on the 25th day of the present month.

"I am, very respectfully, sir, your obedient servant,

"G. W. CAMPBELL,

"*Secretary of the Treasury.*

"To JACOB BARKER, Esq., of New York."

These two letters form the contract; their most important features are that if any part of the twenty-five million loan should be borrowed on terms more favorable to the lenders, the benefit of the same terms should be extended to the persons who might then hold the stock issued for the ten million loan, and that funded stock was to be furnished for each instalment as fast as the money was received; the certificates could have been prepared in a day; and all that was required was that they should be sent to the loan officers and delivered on the receipt of the money. Nothing was more simple, and no more sure check or gauge could have been adopted.

The Secretary was notified of the moneys being ready at New York, and urged to send on the certificates of stock before the appointed day; that day arrived, and no certificates of funded stocks had been received at the loan office, or notice that he was not satisfied with the assurance given that the money would be forthcoming.

In place of funded stock, scrip certificates had been received, which required that the whole one million two hundred and fifty thousand dollars should be held as security for the payment of the other instalments, involving all those who furnished me with money in the issue.

I might as well have been required to have furnished that number of moons as my security. This was a plan of the treasury clerks to break me down; it did not succeed, as will appear from the correspondence published herewith.

The receipt of letters from the banks, informing that I had deposited a million of dollars subject to the order of the treasury, as soon as the stock should be furnished, brought the Secretary to terms. My having deposited this million, without the aid of bank patronage or stock, was deemed a sufficient assurance of punctuality, and the stock was promised; yet, after this, he allowed its issue to be embarrassed by a connexion with the scrip certificates, and attempted to retain one twentieth part on each scrip certificate as security for the fulfillment of my contract, declaring at the same time that he was satisfied, so far as I was concerned, and that it was not deemed necessary on my account.

This requisition was also resisted by me, and yielded by the treasury, after the most perplexing and injurious delays, which the correspondence will show.

The whole machinery of the scrip certificates was uncalled for, and not of the least utility; entailed on all parties great confusion and perplexity; made it necessary to pay all the instalments into the same banks where the first instalment should be paid; and came very near defeating the whole loan.

The Secretary having refused to allow the benefit of the conditions to remain with the contractors, stipulating that it should follow the stock into the hands of those who might hold it when more favorable terms should be allowed, it was to have been presumed that the certificates of stock would have borne on their face the conditions; it was quite as important on the market price as the rate of interest or the period of redemption.

Yet the certificates, after the most injurious delays, came on without such conditions; this involved me in difficulties with those who had furnished me with money on my promise to secure them with stock, bearing the conditions which I understood the Secretary to have promised the certificates should bear on their face.

This promise the Secretary did not remember when remonstrated with for the omission; whether he promised or not, it was equally his duty to have had it put on—nothing could be more reasonable than that those who parted with their money should have written evidence of their rights.

This difficulty I was enabled to overcome, yet not without much cost and great inconvenience.

In the Secretary's report to Congress, on the 23d of September, 1814, he says: Under the act of the 24th of March, 1814, by which the President was authorized to borrow twenty-five millions of dollars, a loan was opened on the 2d of May for ten millions of dollars, in part of that sum. A loan for ten millions of dollars was considered as more likely to prove successful than if an attempt were made to obtain the whole amount of twenty-five millions at once.

The sums offered for this loan amounted to \$11,900,806, of which \$2,671,750 were at rates less than 88 per cent., and \$1,183,400 at rates less than 85 per cent. Of the sum of \$9,229,056 dollars, which were offered at 88 per cent., or rates more favorable to the United States, five millions were offered, with the conditions annexed, that if terms more favorable to the lenders should be allowed for any part of the twenty-five millions authorized to be borrowed the present year, the same terms should be extended to those holding the stock of the ten million loan.

Taking into consideration the expectation then entertained of any early return of peace, and the importance of maintaining unimpaired the public credit by sustaining the price of stock in the meantime—and also considering the measure was sanctioned by precedent, it was agreed to accept the loan with that condition. Had the sum to which the condition was annexed been rejected, the consequence would have been to reduce the amount obtained to less than five millions, a sum altogether inadequate to the public demands; or by depressing the stock to 85 per cent., to have obtained only a little more than six millions, which would still have been insufficient to answer the purposes of government.

I here subjoin a list, A, of all the proposals made to government for the ten million loan, which were accepted on the 2d of May, and also a list, B, of those that were rejected; by which it will be seen that Mr. Campbell could not have procured more than about one million and a half, in addition to what he accepted, had he originally allowed 85, and only about three millions had he originally allowed 75; and of those sums rejected he subsequently obtained a considerable proportion through Mr. Whann.

a real and bona fide one, but that I possessed the disposition and the means to fulfil it. The low price and dull sale of stock, the unexampled scarcity of money, the general distress which prevailed amongst merchants, together with the high price which I had agreed to pay for the new stock, induced an impression, either that my contract was a mere pretence, or that I had so far taken leave of my senses as to have entered into engagements which no man in the community was able to fulfil. In fact the best informed men in Baltimore, Philadelphia, New York and Boston, united in an opinion that I could not raise even a million of dollars, much less the sum of five millions.

I also informed him, that after having paid my first instalment, it was my intention to proceed immediately to Philadelphia, Boston, and Baltimore, at which cities I calculated to have raised large sums from the banks from the influence of the promised patronage; also, that I intended to send a portion of my stock to London for sale.

He informed me that nearly all of the ten millions wanted had been contracted for, and that for the deficiency, less than a million, he was negotiating with the district banks, and expected to close with them that day, so that I would have the market to myself until government wanted more money, before which peace, in all probability, would take place.

I urged on the Secretary the necessity of having the stock certificates prepared and transmitted to New York without unnecessary delay, that they might, without fail, be there on the 25th of that month, when I had to pay the first instalment of twelve hundred and fifty thousand dollars, observing to him that not one dollar could be furnished without full stock to deliver to those who furnished the money.

The Secretary promised to have certificates prepared immediately and transmitted to the loan offices at New York and other places, when I left for New York, carrying with me a letter from the Secretary of War to his friend Chief Justice Spencer, in words following:

“WASHINGTON, May 5, 1814.

“Barker wishes me to say that he expects from you, and all other friends to the government, the aid of your opinion in enabling him to get along with his late engagements to the public.

“My friend Campbell says he behaved very

well in the business, making his offers promptly and openly, and that to him, in a great degree, is owing the ability of the treasury to borrow at 88; he therefore deserves well of his country.

“Yours truly,

“J. ARMSTRONG.

“To Judge A. SPENCER.”

— “MAY 12, 1814.

“The enclosed will show you the opinion of the Secretary of the Treasury in relation to Mr. Barker.

“I have no objections that you shew it discreetly and confidentially to such persons as you think fit; let me add, that I hope you will do everything in your power to aid Mr. Barker, he certainly deserves it.

“Yours sincerely,

“A. SPENCER.

“To T. BAILEY, Postmaster, New York.”

On the 25th of May I had to pay \$1,250,000, and the same amount on the twenty-fifth of each succeeding month until the whole was satisfied; so that I had scarce an interval of one short month allotted me to make arrangements for each instalment, the success of which depended on seasonable orders issuing from the treasury, to put the whole plan into operation, in such form as would prevent the least interruption.

I calculated upon the promised patronage of government towards the banks, who would thereby be disposed to assist me, with as much reliance as if I had obtained a positive stipulation for the purpose. I had the utmost confidence in its enabling me to raise the required amount. I still believe it was as much the intention of Mr. Campbell to have afforded that patronage as though he had entered into a written engagement to do so.

In passing through Philadelphia, on my way home, I discovered not only an opinion that I could not, but that a desire that I should not, succeed prevailed among the merchants in that place.

Before I reached New York I learned that our whole coast had been blockaded. This circumstance at once terminated my hopes of assistance from the revival of commerce through neutral vessels, and created an alarm lest stocks should fall by the necessity which government would be under to resort to new loans in consequence of being disappointed in the expectation of obtaining a revenue from imposts.

Supposing that the loan had failed, the editors of the “Federal Republican” came out

with a most exulting paragraph; they rejoiced at the distresses in which they imagined the administration and the nation to be involved; distresses which, instead of wishing to alleviate, they discovered every disposition to increase. As an evidence of their inveterate hostility to the country which gave them birth, and affords them protection, and of their systematic opposition to every measure of public defence and preservation, I shall here transcribe the paragraph to which I have alluded:

[Extract from the Federal Republican, May 3, 1814.]

"THE LOAN.

"I did send
To you for gold to pay my legions,
Which you denied me."

"The administration is likely to be left completely in the lurch by the prompters and advocates of the disastrous war into which they have plunged this once prosperous nation, notwithstanding the shrewd calculations of that wonderful financier Eppes, and vaporings of Gales in the Court Gazette, it now amounts to a certainty that the loan will utterly fail. In Baltimore, where the warhawks have, again and again, pledged their lives, their fortunes, and their sacred honors, to strain every nerve in aiding Mr. Madison and Company to take the Canadas, blow up the British fleet, and exterminate the Indians, the whole amount of the loan bid for somewhat exceeds one hundred thousand dollars, or about a two hundred and fiftieth part of the amount which the President is authorized to borrow, this will be rue to the little monarch in his resentment, and his case absolutely calls for commiseration. What! in Baltimore, where patriotism glows and splutters like a red hot poker thrust in a pot of beer, is nothing but frothy words to be expected? One hundred thousand dollars! Call you this backing your friends? a plague on such backing! How much ready money liberality has been displayed towards the administration in Philadelphia we have not yet learned. With such a powerful advocate in that city as Inchiquin Whippoorwill, the amount subscribed there will be at least as great as in Baltimore. The sub-secretary of the treasury, Jacob Barker, has long been on the alert in New York, and it would be wondrous pitiful if the Democrats there should have forgotten that Mr. Madison wants money and must have it. Still greater hope, doubtless, rests on Boston. There, it was promised by the agent for the loan that the names of all the subscribers should be kept a profound secret. As the government is bound to comply with this condition, perhaps we shall never know how much of the twenty-five millions is obtained in that place.

"It is said that the Baltimoreans, out of extreme modesty, did not subscribe so largely to the loan as their dispositions prompted. They were unwilling to be deemed extortioners, and

waited to learn what premium the Yankees would demand for a loan, for the redemption of which no revenue was provided. They expected that friend Barker, compounding with his conscientious scruples, which forbids a Quaker to lend aid to warlike operations, would fix such a bonus as would justify a liberal advance to government, and they have sent agents to trade with the Secretary of the Treasury when it is determined how desperate the fortunes of the administration have become. 'From patriotism well paid much may yet be expected.' 'Should the administration be hard pushed, it cannot be doubted that their western supporters will shell out a part of the cash which has circulated so freely beyond the mountains since the war was waged. A Secretary of the Treasury has been selected among the backwoodsmen, and in this republican government no office should be suffered to become a sinecure.'"

About the 10th of May I arrived at New York and immediately commenced the task of raising money by disposing of the stocks which I held in prior loans, which I was obliged to do at a loss, borrowing from the banks at this place and at Albany, and from individuals, and by procuring it from such other sources as remained within my power.

I was successful in forming my arrangements for the payment of the first instalment. Pending the negotiations for it I received letters from the Hon. Charles J. Ingersoll, a member of Congress from Philadelphia, a particular friend of Mr. Madison, an ardent supporter of the war, and well acquainted with the difficulties the administration were laboring under; and, although that gentleman volunteered to do me full justice, the Philadelphia feeling towards New York seemed to lurk in the background.

The correspondence reads as follows:

"PHILADELPHIA, May 13, 1814.

"DEAR SIR: Without any business to trouble you with, I beg leave, nevertheless, to pursue you to New York with a letter of complaint and compliment; of complaint that you did not call to see me, as you promised you would, on your transit through Philadelphia; and of compliment on the important pecuniary services you have just rendered the country in your liberal subscription to the loan, as well as the very patriotic spirit in which this large contribution appears to have been made. If I had been a member of Congress during the war of the revolution, and Robert Morris, just after saving the nation from embarrassment, had failed to keep a promise previously made to honor me with a visit on his way through

Philadelphia, I should have been disappointed at the same time that, in common with all fellow-countrymen, I would have acknowledged the obligation due to him from the public. Now, as I believe this war to be quite as momentous as that, and your aid to the treasury, at the present crisis, quite as important as Mr. Morris's ever was during the former struggle, I can assure you, without compliment, that I should have been very happy to see you in my house, and that my complaint will be less gentle if ever you omit me again in your journeys from New York and Washington. Your enemies will say, no doubt, that you consulted interest alone in this undertaking. But who has not an eye to his interest? And your friends may, with more justice, aver that your motives were not, as they could have been, *merely* interested. I wish, besides, that the detractors from the merits of those who stand by the country would never go so far as to make it their interest to act with it.

"What a noble State New York is becoming! Since your late elections I begin to fear that Pennsylvania will no longer rank first.

"Very sincerely and respectfully, your friend and humble servant,

"C. J. INGERSOLL.

"MR. BARKER."

"NEW YORK, *fifth month, 20th, 1814.*

"DEAR FRIEND: The mail from your city, the last three days, has been heavily loaded with evil predictions in relation to my fulfilling my contract for the loan. It is, therefore, gratifying to my vanity to think that I am of so much consequence in the estimation of the tories.

"As for them, the moment they are compelled to abandon their exertions to bankrupt the nation, and their predictions that government could not get money to pay their debts, that they should direct all their enmity and similar exertions and predictions towards me.

"But I am at a loss to account why the fustian gentry of Pennsylvania alone should pursue this vile course.

"Do me the favor to contradict everything thee may hear about my having any doubt about my being enabled punctually to meet my payments.

"On the 25th I shall put them to the blush by paying every dollar of the first instalment, without making application to borrow of any individual out of this State, and without selling, or offering to sell, a single dollar of my contract, unless persons should come forward and offer me a liberal profit, in which case I shall sell for the sake of profit, and not because I doubt the goodness of my bargain, nor because it is necessary for me to sell to enable me to meet the first payment.

"Every friend of America ought to wish me success in this business.

"In England the ministerial party and news-

papers consider it a good cause of exultation when the contractors for the loan make large fortunes by it, and the government always and publicly give preferences to old contractors; but when I was in Washington there appeared a durable fear on the minds of many members lest I should make a little profit by a bank charter, or some other operation with government, although they all knew the happy sensation produced last summer by my repairing to Washington with an unexpected tender of a loan of five millions of dollars; and from that sensation, and from the fact of its being publicly announced in the papers that the federal merchants of New York had associated with me to loan money to government, are government indebted for the great appetite that was created for the seven-and-a-half million loan.

"The whole nation came forward, because they thought it must be a good business to induce the federal merchants of New York to embark in it; which brought down upon me the abuse of the whole federal party, and not one political friend was known to utter even a whisper in my vindication, and the republican newspapers tamely suffered the abuse of the opposition to go unnoticed.

"At length an unknown friend in Virginia has devoted his columns in the cause of truth, as thee will perceive by an extract in the National Advocate of this morning.

"Excuse my thus troubling thee, and believe me, sincerely, thy assured friend,

"JACOB BARKER.

"CHARLES J. INGERSOLL."

"PHILADELPHIA, *May 21, 1814.*

"DEAR SIR: On your own account, and on my own, and on all accounts, I am exceedingly happy to learn from you, as I do by your letter of yesterday, that there will be no difficulty nor delay in the payment of the loan instalment falling due on the 25th of this month. I had heard a suspicion to the contrary expressed; but relied, nevertheless, on your means and determination to be punctual. In the present phrenzy of parties that all prominent men should be denounced is to be expected. You must not flatter yourself with escaping the ordeal. But as it never has hurt any person who had not by misconduct prepared himself for injury, I am sure you have nothing to apprehend. It will afford me great satisfaction to discountenance all unfounded rumors or assertions to your prejudice in this business.

"I leave Philadelphia the 2d June to attend the federal court of Delaware; to be gone for a few days. I hope, however, that this temporary absence will not deprive me of the pleasure of seeing you when you come this way from New York.

"Your very faithful, obedient servant,

"C. J. INGERSOLL.

"MR. JACOB BARKER."

During my negotiation for the loan I was in correspondence with the Bank of America, which had a very large capital, I believe the largest of any bank in America, and supposed the advantages of my plan would induce the directors to embark in it.

Before the appointed day I received a letter from the president of that bank proposing that I should transfer the negotiation to them. This I declined, promising to secure for the banks who might assist me all possible aid from the treasury, and to return to New York and confer with them before I committed myself to any other bank or made public my plans. I did so, and used every argument in my power to induce them to embark. They loaned to me, through my brother Abraham, who was a director, \$250,000, declining all further connexion with the subject.

Had that bank embarked to the extent of its capacity the Secretary would have been likely to have put my whole plan into immediate operation, the circulation and deposits which would have resulted therefrom would have enabled it to have encompassed not only the whole five millions, but the residue of the twenty-five millions authorized by the law. It would have given such a character to the stock that the bank would have sold to monied men as fast as their necessities required them to do so. Large as was its capital, the profits of those operations, had they been carried out through that bank, would have gone far towards doubling its capital.

A great majority of the directors were politically opposed to the administration, which, doubtless, had an influence on their minds in deciding the question, however much they may have endeavored to rise above such considerations.

What influence Messrs. Astor and Parish had on the minds of individual directors cannot be known. Those gentlemen, in connexion with John Donald, of Baltimore, had a favorite project of introducing British fabrics into the United States through Canada, and supposed, if they could defeat my operations, the necessities of the government would induce the administration to adopt their plan, hence their opposition; it did not arise from any political feeling. Oliver Walcott, the president of the bank, having previously refused to co-operate

in procuring subscriptions, lest it should interfere with Mr. Astor's plans, it is not unreasonable to conclude that the same influence continued to operate.

"NEW YORK, *fifth month, 11th, 1814.*

"GENTLEMEN: I wish to borrow of you one million two hundred and fifty thousand, (\$1,250,000,) for which I will allow you six per cent. per annum interest, to be paid in advance every sixty days.

To secure the payment, I will transfer to you a sufficient amount of funded stock in the twenty-five millions loan, estimated at eighty-eight, (88,) to cover your advances, this amount to be placed to my debit and to the credit of government in your books on the 25th instant. It will be drawn out as sparingly as the convenience of government will permit, and great pains will be taken when it is drawn out that your bills be received for it and circulated through the Union.

"Should I at any time be disposed to redeem a part or the whole of this stock, I am to be at liberty to do so, and, in that case, to have the right, on giving three months' notice, to require the same amount, or such part of it as I may choose, to be loaned to me again on a like security, so long as the said bank shall receive one-fourth part of the collection of custom-house bonds, and one-fourth of the other government business at this place, which business I will undertake to procure from government, and if I do not succeed within thirty days from the 25th instant, the bank shall have a right to require me to refund the amount loaned, and to sell the stock for the most it will fetch to accomplish that object. And although this loan may be refunded in a month, and no other loan in lieu thereof be required, the said bank may calculate on having the benefits of said business from government for at least two years, and that they will not be disposed to change it after that period without some more powerful cause exists than anticipated; and although I only stipulate for a quarter of the government business, I will do all in my power to increase that proportion.

"Very respectfully, I am your assured friend,
"JACOB BARKER.

"TO THE PRESIDENT AND DIRECTORS OF THE
BANK OF AMERICA."

—
"NEW YORK, *fifth month, 14th, 1814.*

"DEAR FRIEND: I have raised a large sum of money, through my friends, and are selling my old stocks at a loss, and shall be enabled to pay the first instalment on the day promised, although I find it totally impossible to make any satisfactory arrangements with either of our banks in season. I have thought it best to leave the banks to reflect for a few days, and to bring all my own resources into action for the first payment. I therefore have to beg

thee to retain in thy own hands all the patronage of government, and not grant any favors to any banks until thee hears again from me. Please withhold from the City Bank all share of the public deposits for a few weeks.

"I go this evening to Albany with the hope of doing something at that place; and depend upon it that the scarcity of cash existing among the banks is even more serious than we supposed, and thee may also depend upon my overcoming the difficulty, provided government lend all their former aid in favor of the best interest of the country.

"Avoid, if possible, drawing on New York for a few weeks. A little repose for our banks is absolutely necessary.

"I consider the news about the allies entering as a palpable fabrication.

"In great haste, thy assured friend,

"JACOB BARKER.

"GEORGE W. CAMPBELL."

On the 14th of May I notified the treasury that I would place to the credit of the government, on the 25th of that month, in the Mechanics' Bank \$625,000, in the Bank of America \$250,000, and in the City Bank \$375,000, as will be seen by the following:

[Extract.]

"5th Month, 14th, 1814.

"I will place to the credit of government, on the 25th of this month—in the Mechanics' Bank, \$625,000; in the City Bank of America, \$250,000; and in the City Bank, \$375,000. Please give the cashiers of those banks orders to issue such scrip certificates as will enable me to obtain funded stock for the whole, or funded stock for a part, and scrip with only one instalment endorsed on it for the balance. If, however, there should be an objection to my taking two descriptions of scrip I will take funded stock for the whole.

"Very respectfully, thy assured friend,

"JACOB BARKER.

"G. W. CAMPBELL, Secretary."

"NEW YORK, fifth month, 17th, 1814.

"DEAR GENERAL: The vast responsibility which I have assumed engross a large portion of my thoughts, because the difficulties I have to overcome before I can accomplish the desirable end are ten times greater than my friends at Washington anticipated; I, however, neither doubt or despair, but, had my original plan been adopted, to wit, had the Secretary of the Treasury by contract given to the banks the patronage which he will give as a free will offering, I should have less trouble and anxiety; to remedy existing difficulties, I am sacrificing a few thousand dollars in selling old stock and other ways converting my property into cash, but for my misfortunes since the war, I should have had an estate of nearly half a

million of dollars, the whole of which should have been devoted to the service of my country, and, as it is, I have about half that sum, of which the last dollar, if necessary, shall be sacrificed to enable me to fulfil my contract—the pleasure of the nation at the success of the loan, both as to rate and amount offered, is more easily conceived than described. I have not met a man of any political description that has not expressed his disappointment—a new current in respect to our loan will henceforth prevail. * * * * *

"It will require all the support and friendship of the Treasury Department to carry me through, to the importance of which I beg thee to call the attention of the Secretary of the Treasury. I was at Albany yesterday and had a conference with the banks at that place, those institutions must all have a little time to reflect. I, therefore, after exhibiting to their view the advantage to be derived from taking a share with me in my contract, left them without manifesting any solicitude for them to do so, and they promised to send agents to this place to negotiate with me. I shall do something to advantage with them. * * * * *

"A cartel has arrived. My brother writes from Liverpool that there will certainly be peace in July or sooner—he is well informed.

Mullet & Co., of London, who are also well informed, write a different opinion.

No news from the John Adams; the season had been so bad that 23 mails were due from Gottenburg when the cartel left England.

"British manufactures fell 20 per cent. between the 15th of March and the 8th of April, in consequence of the impossibility of selling them in the continental markets, they were all glutted, and no purchasers in consequence; very large quantities destined for the continent had been shipped for Halifax, for which place a richer convoy was near about sailing than had ever been sent there, and the manufactories were in great distress for cottons, which, together with the general blockade will, I think, convince every man in the nation of the bad policy of repealing the restrictive system.

"The success of the allies and the general blockade operate very much against the loan; so difficult is it to raise money that Parish told me it was impossible for him to raise a single \$100,000 in Philadelphia on a deposit of United States stock; a Mr. Williams, a director in one of the banks at Baltimore, and Mr. Lawrence, a director in the Manhattan Bank, went to Boston to borrow money for those banks, and, although they offered to deposit United States stock at 50 per cent. and the security of their banks, they could not get a single \$100,000.

"Thus, my friend, if I accomplish what I have undertaken, my enemies, I hope, will give me some credit.

"Very respectfully, your assured friend,

"JACOB BARKER.

"General JOHN ARMSTRONG.

[Extract.]

"NEW YORK, *fifth month, 19th, 1814.*

"ESTEEMED FRIEND: I wrote thee under date of the 14th, saying that I should pay, on the 25th instant, to the credit of government in the Mechanics' Bank, \$625,000; in the Bank of America, \$250,000; in the City Bank, \$375,000; in all, \$1,250,000; the amount of the first instalment on my subscription to the ten millions loan, which I now confirm.

"I wish scrip issued by the Mechanics' Bank for about \$50,000 of the above; and for the balance I wish stock; if I cannot have both, I wish funded stock for the whole.

"Please give timely instructions to the cashiers of the different Banks.

"Some Philadelphians are here who have been disappointed in getting part of the loan, who say that I have backed out of the contract, and that in consequence thereof new books for subscription to the loan are open at the banks in Philadelphia.

"This base fabrication cannot injure me, as I look upon everything with composure, and am determined to be quiet and apparently unconcerned until after the first instalment is paid.

"Gallatin writes from Amsterdam, under date of the 8th of March, that he left St. Petersburg on the 25th January, and reached Amsterdam on the 4th March, where he only waited the arrival of the Neptune to depart for America; she was frozen up in the outer harbor of Gottenburg, from which place no vessel had departed for seven weeks previous, the winter having been uncommonly severe.

"He expected her by the 15th, and to depart by the 1st of April, but no packet reached England prior to the 8th of April, the ice must have detained the Neptune longer than he calculated.

"He had not the least intention of stopping in England. Bayard would proceed to Gottenburg to attend to his new appointment.

"Gallatin had not received any information of his new appointment, nor was it known in Liverpool on the 8th of April.

"When he left St. Petersburg, he did not know that the Russian mediation had been entirely rejected, nor had he any official advice of his own rejection by the Senate, his last letters from the American government being dated in June.

"At Amsterdam, Bayard received the information in a letter from the Secretary of State, dated January 8th. It is probable the John Adams will arrive out in season to detain Gallatin in Europe.

"Thy assured friend,

"JACOB BARKER.

"GEORGE W. CAMPBELL, esq".

The story of my having backed out of my contract arose from subscriptions going on at a bank in Philadelphia, through Cashier Whann, of the District of Columbia, for a portion of the remaining million; the National Intelli-

gencer, the organ of the government, having announced that the whole ten millions had been taken, the Philadelphians concluded, from books being immediately thereafter opened to receive subscriptions in the ten millions loan, that the contractors had backed out, and did not hesitate to assume it as a fact and circulate it to my prejudice. No banks had been opened in Philadelphia by authority of government. The whole proceeding was an effort of individuals to encompass this million, who were aided by the bank doing business with government, who wished to defeat my plan of taking away a portion of its business. They failed in their attempt to encompass the million.

"WASHINGTON, *May 19, 1814.*

"DEAR SIR: I have to acknowledge the receipt of your several favors since you left this, including those of the 14th inst., and the pressure of current business alone prevented an earlier answer to either of them.

"I regret you should have found it necessary to make any sacrifice, in order to effect your object in relation to the loan. I trust, however, that the price of stock will soon advance so as to enable the holders of it to realize without difficulty, not only the full amount it cost them, but such an additional profit as will be an ample reward for their trouble and exertions, as well as the dispositions by them manifested to aid the fiscal operations of the government.

"You request that directions may be given to the cashiers to issue such scrips as will enable you to obtain stock. The scrip is all issued in the same manner. The instructions to issue stock upon the scrip are given to the Commissioner of Loans. It is, however, submitted whether any real advantage would result to you from authorizing stock to be issued on the scrip immediately for the first instalment.

"The authority, if given, must be general, and such as choose allowed to take advantage of it. It would seem to me the scrip would be as valuable, and would be made to answer all the purposes of stock, at least for the one month; after which stock would issue in the usual course for the first instalment. The objections, however, to issuing stock on each instalment were not deemed insuperable, nor are they yet considered so upon proper assurances being given. It will, therefore, be done to such as may require it, if you shall consider it necessary to insist on it as it was stated in your proposal. Some additional assurance, however, besides the retaining the one-fourth per cent. would be desirable; not to stimulate you to exertions, which is not considered necessary, but for other reasons which you will readily perceive, and to which you will no doubt give their due weight. Your determination on this

point you can make known to me at a day sufficiently early to obtain stock as soon, probably, as the new certificates for that purpose can be prepared. No time, however, will be lost in having them put in a state of readiness.

"Some inconvenience will be experienced in issuing stock for every instalment, which it would be desirable to avoid; and you will consider whether your interest would in reality be promoted thereby; or whether it might not excite some alarm that you intended throwing the stock thus issued into the market, &c.

"These remarks are suggested merely for your consideration, that you may view the whole ground as it presents itself to me in finally making up your opinion on the subject.

"No embarrassment, however, will be occasioned by me to any of those engaged in the loan, that can consistently with strict propriety and the public interest be avoided.

"The late news from Europe is very unexpected, and in many respects extraordinary, but will, upon the whole, it is presumed, improve the price of stocks; which are quoted in England some at *par* and others nearly so.

"Please tender my best respects to Mrs. Barker, and believe me, with sincere esteem, sir,

"Your friend and most obedient servant,
"G. W. CAMPBELL.

"JACOB BARKER, esq."

[Extract.]

"5th Month, 21st, 1814.

"The banks have received from me the circular authorizing them to receive the first instalments on the five millions I subscribe to the present loan, and to issue scrip therefor. Under those orders I fear I cannot get funded stock for the amount of said instalments, as the persons from whom I have borrowed the money will not let me have it on scrip that will subject them to loan further and greater sums. I beg thee to give such further orders as may be necessary to carry my agreement into full effect; do not let there be a day's delay, as it would be to me a source of great mortification not to pay the instalments regularly. Such a circumstance will be used with avidity by the public and ascribed to the want of money, and be trumpeted all over the United States, greatly to my injury and to the injury of government, and of the public stocks. I have borrowed of the City Bank, in this city, \$500,000 towards paying my second instalment; the directors of that bank have and will do everything in their power to accommodate government and to assist me through my contract. I therefore take the liberty of recommending that bank to thy notice, and to solicit for it all the support and patronage in the power of government to give.

"Very respectfully, thy assured friend,
"JACOB BARKER.

"GEORGE W. CAMPBELL."

It is evident that one of the objects in withholding the stock was to prevent my putting it in the market for sale; how else was I to raise the money, and why was the money required to be furnished in four monthly instalments? Was it not to allow the contractors time to sell the stock received for one instalment to pay the next, and so on to the end? Again, was not the stock mine after I paid for it, and if mine, had I not the right to do with it as I chose?

Having a million in money in readiness to be placed at the disposition of the treasury, without the aid of a dollar's worth of stock or the promised bank patronage, I concluded this, with my having previously lent more than seventeen hundred thousand dollars to carry on the war, would be a sufficient assurance for the payment of the instalment. Security had been expressly waived, and the Secretary in this letter says, that so far as I was concerned that it was not necessary, and that I was by my contract entitled to the stock, which should be issued as soon as the certificates could be prepared. They should have been prepared long before; it was but the work of a day. The delay was a manœuvre of the treasury clerks; the Secretary was made to believe I wished the stock to throw into the market to break down its price. Not doubting that the stock would be at New York on the appointed day, I opened a negotiation with the City Bank, who appointed a committee to negotiate with me, and which committee made the following written proposition, which was presented to me in the hand writing of one of its members:

"The committee will propose to the board, provided it meets the views of Mr. Barker, to loan him \$500,000 for one year, at 6 per cent. per annum.

"Interest to be paid quarterly; to secure payment of which, Mr. Barker shall transfer to the bank a sufficient amount of funded stock of the twenty-five millions loan, estimated at eighty-five per cent. (\$15,000 in a note endorsed by Minturn and Champlin, to make up the difference between 85 and 88 per cent.) This amount to be placed to his debit, and to the credit of government on the 25th June next.

"Mr. Barker to have the privilege of redeeming the whole, or any part of the stock so pledged, at any time on or before the expiration of the term for which the loan to him is made.

"Mr. Barker immediately to obtain the transfer of one-third of all the government business

in this city to this bank, to continue for at least two years."

To this proposition I agreed, on condition that it should be void if government did not give them one-third of its business in this city. When the committee presented the proposition to the board of directors, it was agreed to by them, and the word "carried" written on it by the president. The original paper, thus marked by the president, was delivered to me and remains in my possession. This arrangement proves, beyond all controversy, that I had not set too high a value upon the patronage of government, and that if the expected patronage was afforded I could do more than I had undertaken to perform.

While I was engaged in the most active exertions to complete the necessary arrangements to enable me to comply with my contract, a considerable number of the Federalists were equally active in their endeavours to frustrate my plans. Not contented with the innumerable calumnies which flow through the channel of private conversation and secret whispers, they continued to resort to newspaper productions. Among other incorrect publications on the subject, I shall notice another article which appeared in the *Federal Republican*, shortly after the contract for the loan of the second of May was made. In that article, with a view to alleviate his mortification, and to recover from the fall which he had sustained by the failure of the strong predictions which he had so often repeated that the loan would fail, and lest it should become publicly discovered that the Federal party did not possess all the wealth and talents of the nation, the conductor of that paper states, among other things, that the money which I had lent was Federal money, which gentlemen of that character had authorized me to contract for on their account, upon condition of keeping their names a secret; and that I had not only made private promises of secrecy, but had caused a public promise to that effect to be inserted in the Boston newspapers. This is so far from being correct that I never published any advertisement in the Boston papers upon the subject, either with or without such a promise; nor have I the smallest recollection of having entered into such an engagement in any private conversation, much less in an advertisement. No ne-

cessity ever existed for such a measure. I never heard that any gentlemen who had subscribed through me to the loan intimated a wish that their names should be concealed; on the contrary, they appeared to consider themselves performing a very pleasing and honorable duty to their country. The only imaginable reason to which I could attribute the statement of the "*Federal Republican*," that I had obtained subscriptions under such a promise at Boston, was that its editor had ascertained that all the subscribers on my public book in New York did not collectively sign for much over four hundred thousand dollars. It could not, therefore, have been Federal money, unless I had secret subscribers for the money which I had contracted to supply. That the editor of the "*Federal Republican*" had procured information of the little success I had met with in obtaining subscribers for the loan no one will doubt who reads his previous article of the third of May.

I now considered myself not only provided with funds to pay my first instalment, but also with half a million of dollars towards my second one, when the following correspondence took place:

"Fifth month, 21st, 1814.

"ESTEEMED FRIEND: I have had great success in my operations, and, although I have not yet got quite all the money for the first instalment, I have borrowed \$500,000 towards the second instalment, and shall not have any difficulty in getting the whole five millions in season punctually to meet my payments.

"I have not as yet made many arrangements predicated on the banks getting government business.

"The accommodation I get from the City Bank is to be immediately refunded them if they do not get one-third part of all the government business done at this place, therefore I beg the favor of thy giving the necessary orders to that end, particularly to the collectors of the customs, and to the collectors of internal taxes for this and the neighboring districts, and in relation to the deposits of money collected in New England States. I am very anxious for this to be done within a very few days that there may not be any bar to my proceedings.

"This is the one-third of the business I contemplated procuring for the Bank of America, but as I could not get the accommodation expected, I have not promised them anything, but they have lent me \$250,000, and will probably lend me more, therefore I feel very desirous that they should have a part of gov-

ernment business. Can thee not give them the business which thee contemplated giving the City Bank in the event of my getting such accommodation from the Bank of America as for thee to have been induced to give them one-third of the business which I now solicit for the City Bank. At any rate, I wish thee to order a few of the county collectors of internal taxes in New Jersey, New York, and Connecticut, to make their deposits in the Bank of America.

"In the course of a few weeks I calculate to make an arrangement with them about their notes being received throughout the United States.

"I fear I shall suffer severely by my contract, as money is very scarce, and I have to make large advances, that is, I have to deposit the stock as collateral security at a less price than I give for it, some as low as 75—consequently I have to advance the difference, which on five millions is more than any individual merchant in America can spare from his other business without great loss, and by the sale of old stocks I shall lose all my commissions on the five million loan.

"Be the loss what it may, I will persevere through it, and prove to the world that I can do what they say no other man in America could have done, and what very few thought I could do. The government have only to support and protect me and I can give them all the aid they want. I should be glad if thee could address a letter immediately to the City Bank, expressing pleasure at their having aided me, &c., &c. I enclose for thy perusal an agreement by which thee will perceive the terms on which I am picking up the money in small lots, which please return to me by mail. I am sorry to say that Smith, and other Baltimore people, are very hostile to me, and that Astor is worse, and has spoken to the directors of the bank, cautioning them against expecting favor from government from my influence. Upon all those things I smile with silent contempt—carefully avoiding taking part in such unworthy feelings, or in any other way having my mind diverted from the single object of punctually fulfilling my contract, which is as near my heart as my existence.

"With esteem, &c.,

"JACOB BARKER,

"GEORGE W. CAMPBELL."

"Since writing the above, I have seen the Federal Republican of Friday, from several articles in it, and from several which have previously appeared in that paper, I am satisfied, beyond a doubt, that Smith, the cashier of Baltimore, details to him all the facts thee knows, and a great many conjectures as facts, with a view to injure thyself in the estimation of the public. J. B."

[Extract.]

"NEW YORK, *fifth month*, 23d, 1814.

"I have only time by this mail to say, in

answer to thy esteemed favor of the 19th inst., that it will not be possible for me to get on without I get funded stock for each instalment as fast as I pay them.

"I have mortgaged my stores to one of the banks to secure them against loss for the money lent me by a fall of the stock, and I have given other security to other banks, and to individuals I have hypothecated the stock below the contract price, which subjects me to a heavy advance."

The instalment day arrived, and no stock had been received at the loan offices. To pacify those who had agreed to furnish me with a portion of the money on the security of stock, and to prevent ultimate disappointment, I induced them to place it in the New York banks, each taking an agreement from the banks to refund it in case the stock should not be received within a limited number of days. Notification was sent to the treasury by the banks that they held the money subject to its order, provided the stock should be furnished within a limited period. Under this arrangement I placed one million of dollars in the banks on the 25th May, 1814, and addressed a letter to the Secretary of the Treasury as follows:

[Extract.]

"NEW YORK, *fifth month*, 26th, 1814.

"Every malice, political prejudice, scarcity of money, timidity with the banks, commercial distress, and the entire stagnation of commerce, all operates against me, yet I have the vanity to believe myself more than a match for the whole.

"Thee knows I never represented my subscribers as amounting to much, and they have dwindled into mere nothing.

"The arrangements I have made with the City Bank of this place are the most pleasing and satisfactory, although I have not, as originally intended, placed any part of the first instalment in that bank, yet I have an absolute engagement from them to loan me \$500,000 for one year, and place it to the credit of government on the 25th of next month, therefore I have to request that thee will, without delay, place one third of the business of this place with that bank, of which the collection of internal taxes forms an important item.

"I have not as yet perfected any arrangement about the notes of any bank being received for duties and taxes in other parts of the United States; that business has not lost any of its importance, in my estimation, and must use it to carry me through my other payments.

"On the payment of the first instalment on my subscription of five millions to the last loan, I was, by contract, to receive funded stock. That not being in readiness to deliver

me, I could not fulfill my engagements to the money holders to whom I had agreed to hypothecate it as collateral security for money they agreed to loan me. As they would not take a scrip, the goodness of which depended on the payment of another instalment, this difficulty could not be entirely overcome, and if these knew what trifling circumstances frighten money holders these would be surprised at the extent I have progressed in overcoming it, which I have done so far as to deposit \$150,000 in the Mechanics' and Farmers' Bank of Albany, \$250,000 in the Bank of America in this city, \$625,000 in the Mechanics' Bank in this city, and, I hope, in a day or two, to deposit the remaining \$225,000. It will, at all events, be done the moment I can get full stock, and I was not bound to pay before I got full stock."

—
"WASHINGTON CITY, May 23, 1814.

"DEAR SIR: Your favor of the 19th instant has been received. I wrote you a few days ago, informing you that the scrip for the loan would issue as usual, that instructions to issue stock must be given to the commissioners of loans, who would then issue it on the scrip. In addition to what I then said on this subject, I would now remark that instructions to commissioners of loans in relation to stocks are generally given by the comptroller. Mr. Bacon is now absent, but is expected about the first of next month, and though another person (Mr. Luffborough) is authorized to act during the absence of the former, yet it would be more agreeable that instructions of such importance should come from the comptroller himself. The delay awaiting his return would occasion in issuing stock could be only a few days. Advise me on receipt of this.

"With much respect, I am, sir, your friend and most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq."

This letter completely establishes the very material point that Mr. Campbell considered me entitled to receive funded stock; for without raising any objection, or mentioning any other difficulty, he ascribes the delay merely to the absence of the comptroller, assuring me that the only inconvenience which would be experienced would be that of a few days delay.

The reason for the delay, in my estimation, was totally inadequate.

In full reliance on the promise of the Secretary to place a portion of the public patronage at my disposal to such approved banks as should aid me in supplying the necessities of the government, I made application to the Bank of America in relation to circulation, as follows:

"Fifth month, 27th, 1814.

"GENTLEMEN: If you will loan to me \$1,250,000 at 6 per cent. per annum, I will secure the payment by transferring to you \$250,000 stock in your bank at the market price, and \$1,000,000 six per cent. stock in the 25 million loan at \$8—\$250,000 to be paid to me from time to time as I meet with opportunities to purchase your stock, and of the \$1,000,000, \$250,000 shall be returned you for money loaned to my brother; \$250,000 placed to the credit of government on the 25th June, same the 25th July, same the 25th August, in the books of your bank, the whole, or any part thereof, to be refunded at my pleasure, and to be reloaned to me on like security, and three months' notice whenever I may wish it, and I will undertake to procure from the Treasury Department an order to the several banks at New Orleans, Savannah, Charleston, Wilmington, North Carolina, Norfolk, Wilmington, Delaware, and in the New England States, who now or hereafter may do government business, to receive your notes in all payments to the United States, and to hold such notes at your disposal, transmitting to the Treasury Department a weekly, monthly, or quarterly certificate of their amount, which certificates the Treasury Department shall transmit to you to place the amount to the credit of government in your books; this arrangement shall continue for two years, and, if it operates to the satisfaction of government, they will be disposed to continue it as it is believed to be capable of answering all the purposes of a National Bank, and a substitute for such an institution is very desirable—the collectors of internal and external taxes being instructed to receive all the notes that the bank will receive where they do business, a more extensive order from the Treasury Department is not thought necessary to give your paper complete circulation—before you loan the money the orders here promised shall be issued, and the moment you are deprived of the business by government, my right to borrow from you to cease, and all the money borrowed to be forthwith refunded, and you to have a right to sell my stock for the most it will fetch to accomplish that object.

"With esteem, your assured friend,

"JACOB BARKER.

"PRESIDENT AND DIRECTORS OF THE BANK OF AMERICA."

—
"WASHINGTON CITY, May 27, 1814.

"DEAR SIR: Your favors of the 21st and 23d have been received and duly considered. Indisposition for some days has prevented me from answering them, or, indeed, attending to business, except in unavoidable cases. Enclosed you will receive the letter that accompanied yours; and in a day or two shall answer them more in detail. In the meanwhile no time shall be lost in sending on the certificates of stock to the loan office; and the best instructions in our power, on the subject, will be given at as early a day as possible. No disposition is entertained to throw any difficulties in your way; but we must act consistently, and, as far as our judgment enables us to decide, correctly. This is all I have written for some days.

"I am, sir, your friend and most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq.

"P. S.—We hope the next news from Europe will be more acceptable than the last, and raise the price of stocks."

—
"WASHINGTON CITY, May 25, 1814.

"DEAR SIR: Your favors of the 21st have been duly received, and enclosed I return you the letter which accompanied them.

"I regret very much you should meet with difficulties in effecting payments on your part of the loan. It is hoped money operations will become more easy. The next news from Europe may, probably, announce a continental peace, whether Bonaparte or a Bourbon rules in France. This would, undoubtedly, produce a rise in stocks and greatly facilitate all our fiscal operations.

"I am duly sensible of the liberality with which the City Bank has at this eventful crisis afforded its aid to the government. Its friendly disposition is evinced as well by the amount of the loan it has itself taken, as by the facilities

it has afforded individuals in fulfilling their engagements with the treasury.

"The application made by that bank, through its president, for a portion of the public deposits has been held under consideration, and a disposition is entertained to extend to it a share of the benefits of such deposits. Should this be done, however, it must be with a due regard to the interests of other institutions who have not failed, in like manner, to afford their aids to government.

"May 28.—Your favor of the 23d instant has been received.

"You may rest assured we shall not do anything calculated to embarrass those engaged in the loan that can consistently, with propriety, be avoided.

"You observed in your letter to me on the subject of stock, &c., you were desirous to retain a certain part of the scrip without taking certificates of funded stock thereon. To effect your object, therefore, as far as it appears to me practicable, consistently with a due regard to the public interest, and in compliance with your proposal, I have directed instructions to be given to the proper loan officers by which you and other large subscribers to the loan will be enabled, on application, to obtain certificates of funded stock for the amount of each instalment paid, except one twentieth part thereof; for which one-twentieth part certificates of stock are not to be issued until the next instalment is paid. This one-twentieth part is retained in scrip as the *assurance* for the payment of the next instalment. This cannot, it is presumed, in any degree embarrass your arrangements; being, as nearly as may be, conformable to your own views, as made known to me in your letter already noticed.

"The instructions to the loan officers it was expected would have been sent off this day. The comptroller, however, has not been able to prepare them. They will, without fail, go on Monday next.

"The certificates of stock could not be prepared at an earlier day, and your pressing solicitation alone induced me to cause the instructions to be now issued; otherwise they would have awaited the return of Mr. Bacon.

"The first part of this letter was written on the 25th, and previous to the few lines last sent you. Indisposition prevented me from then finishing it, or, indeed, attending to other business during some days. My health is improving, though still very delicate.

"Please make my compliments acceptable to Mrs. Barker, and believe me, with much respect, sir, your friend and most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq."

"P. S.—Since writing the above I have received a letter from the Bank of America, advising the payment made by you, and that it was not to be drawn from the bank until the

stock was issued. You can satisfy that, and other banks, on that head, from the foregoing. There will certainly be time for the instructions to reach the *loan officer* before the money is called for, especially in that bank, or, indeed, as far as now known, in any other.

"No pressure shall be made on any bank that can be avoided.

"We shall, probably, make a pretty large *draft* in favor of Mr. Lee, on the Mechanics' Bank; but it is understood to be perfectly agreeable to that bank, and most of the money already advanced; otherwise it would be divided, &c.

"Yours, &c.,

G. W. C."

"NOTE.—The foregoing arrangement, as to issuing stock, is believed the most agreeable to you, upon the whole, that could be adopted; and far *preferable to bonds*, the *scrip* being equally valuable, especially that small proportion, as if in stock. And, moreover, the *stock* and scrip being *guaranteed* by government, at least equal to the contract price for the present year, or most of it, in effect, &c. *Adieu.*"

John Donald, of Baltimore, and David Parish were at Washington negotiating with the Secretary for the introduction of British goods through Canada, coupled with a loan of their avails. These gentlemen assured the Secretary that it was impossible for Mr. Barker to furnish the first instalment. And so confident of this were they that they tarried in Washington until the result was known. On it depended the success of that negotiation. On receiving notice from the New York banks that Mr. Barker had placed with them a million of dollars, without the aid of stock or patronage for the banks, subject to the order of the treasury, the Secretary informed the gentlemen in attendance that the money was forthcoming. They exclaimed "impossible," and would not believe it until the Secretary exhibited to them the letters from the banks.

How far they had influenced the withholding the stock, and the conduct of the treasury clerk, could not be ascertained.

"WASHINGTON CITY, May 30, 1814.

"DEAR SIR: Your favors of the 26th inst. have been received.

"Rest assured I duly appreciate the exertions you have made to fulfil the terms of your proposals, as well on your own account as on that of the public; and sincerely hope and trust you will be successful in doing so. I have received letters from the banks showing the progress you have made; and from them I conclude you will overcome all difficulties.

"I have now time only to inform you that the

letter of instructions from the Comptroller, in conformity with my last to you, authorizing the Commissioners of Loans to issue certificates of funded stock on each instalment as therein stated, has been this day forwarded. The difficulty arising from the want of funded stock will therefore be removed. Wishing you every success, I am, sir,

"Your friend and most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq."

"P. S. On the subject of receiving the notes of certain banks, &c., I will only observe, I at present doubt its practicability."

"NEW YORK, *fifth Month, 31st, 1814.*

"ESTEEMED FRIEND: It is totally out of the question for me to go forward with my contract, without receiving full stock for the money paid the day on which I make the payment. I cannot leave a cent unfunded. If I had more money to spare, which is not the fact, I could not do it, without embarrassing myself with all those persons with whom I am dealing, as thy plan will leave each man's scrip a fraction to be settled hereafter, for which he would not only hold the scrip, but charge me with violating my contract; and I must, at all events, honorably fulfil my contracts with the money lenders, and I must have my scrip unembarrassed to negotiate for the other instalments. The delay that has taken place in furnishing funded stock has done more to injure my future arrangements for paying the other instalments than the whole exertions of the Federal party. I always told thee, that I could not, and would not meddle with the business, if I could not have funded stock for each instalment on paying such instalments. One single day's delay is little short of death, and after death, all the medical aid in the world will not avail. If thee had offered me a compensation of one hundred thousand dollars commission, to make the first payment without receiving funded stock for the same on the day of payment, I would not have undertaken a thing so totally impossible to perform. Yet, when the day came, and the stock was not to be had, I had either to be disgraced or procure the money. I made an effort and succeeded, it is true, but I would not again run the same chance to be ruined for double the amount that I shall make by the contract. I go to morrow to Philadelphia, where I will wait thy answer, as, if thee does not, without a single day's delay, order funded stock to be issued for each instalment, I must immediately repair to Washington, in the hope that a personal explanation will remove the difficulties which, in thy estimation, appear to exist; and which, I cannot but think, are altogether imaginary. To make the matter short, I have to add that thee might as well require of me to pay the whole five mil-

lions at once in eagles, as to require of me more than I promised in my conversations with thee; and all that I promised, I can, and will perform if thee permit me to do so.

"With great respect and esteem, I am thy assured friend.

"JACOB BARKER.

"To the honorable GEORGE W. CAMPBELL,
"Secretary of the Treasury."

Agreeably to the promise made in the preceding letter, I proceeded to Philadelphia, and there had the satisfaction to receive the following letters from the Secretary of War, and the Secretary of the Treasury :

"MAY 31, 1814.

"DEAR SIR: I have been ill of a fever for some time past, which has prevented my answering your late letter. The rule adopted the last year, between the Treasury and War Departments, was to direct the officer in whose favor a warrant was drawn to let the same remain in the bank on which the draft was made as long as was convenient, and in no case to draw from one bank to deposit in another.

"This rule will still be adhered to.

"The President returned yesterday.

"The Secretary of the Treasury is disposed to do for you all he can.

"I am, sir, very respectfully, yours,

"J. ARMSTRONG.

"Mr. J. BARKER, *New York.*"

"WASHINGTON, *June 2, 1814.*

"DEAR SIR: Your favor of the 31st ultimo, is just received.

"I do not probably perceive the ground upon which you apprehend such serious inconvenience will be experienced by you, from the manner in which certificates of funded stock are directed to be issued.

"It is intended that certificates of stock may be issued for the *whole of the* instalment paid by any one subscriber, except one-twentieth part.

"If the same subscriber took several scrip certificates, it was not intended that one-twentieth part of each should remain unfunded, but one-twentieth of the whole. Suppose the same subscriber took twenty scrip certificates each of equal amounts, certificates of funded stock may be issued on nineteen of them. It appeared to me this would meet your views as nearly as could be expected.

"You stated expressly your desire to retain fifty thousand dollars in scrip. The sum that will remain in scrip of the first instalment, until the second is paid according to the instructions given, will very little exceed that sum, (being \$62,500.)

"The instructions apply to the succeeding instalment as well as to the present; there will,

therefore, be no cause of delay in issuing stock for those instalments, in like manner, when paid.

"After the foregoing explanation you will, it is presumed, perceive no difficulty in completing your engagements.

"There is no intention to embarrass you, or withhold from you any *facility* that can consistently be afforded. And the banks or individuals who furnished you their money for the use of government on the ground of receiving stock for the same, need not apprehend that any disposition is entertained to disappoint them in this respect.

"And, if it shall be deemed absolutely necessary, special instructions will be directed to be given to issue stock for the sums that the banks have advised us are deposited with them, subject to that condition. Though it is presumed this will not be the case. And, indeed, it appears to me, your alarm has arisen from misunderstanding the effect of the instructions to the loan officers.

"With due respect, I am, sir, your most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq."

"P. S. I am still indisposed, and nothing but your seeming anxiety would have induced me to write this hasty letter at this moment."

—
"WASHINGTON, June 3, 1814.

"DEAR SIR: Since writing you on yesterday, in order to remove, as far as practicable, all difficulties that you seem to apprehend, and that other large subscribers to the loan might experience in completing the several payments thereon, instructions have this day been given to the Commissioner of Loans of New York, &c., to issue certificates of funded stock, on application, for the whole amount of each instalment paid by subscribers for sums more than \$300,000, &c.

"With due respect, I am, sir, your most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq."

The Secretary here yields the point, and directs funded stock to be issued for the full amount of each payment. The mischief had been done, an incurable injury had been inflicted on the government as well as on me. His efforts to withhold a portion as security for the performance was a most unfortunate move on his part. I had incidentally mentioned in a letter that I wished to receive fifty thousand dollars in scrip, for which, according to the rules of the treasury, \$12,500 would be paid down and left a security for the payment

of the other \$37,500, and full stock would insure for the whole \$50,000 as soon as paid, without any connexion with the other parts of my contract. This the Secretary construes into my wishing to leave \$50,000 unfunded, and expresses the opinion that \$12,500 more will make but little difference; therefore requires that one twentieth of the whole remain, putting it out of my power to give full stock to those who had loaned me money and who should continue to do so.

Had such instructions been given immediately after the contract was signed, as they should have been, the whole operation would have been smooth, and I should have been saved infinite trouble and embarrassment. Any amount of money in such case could have been obtained. The delay, like the protest of a merchant's note, occasioned a mildew not easily removed; besides, there was a blighting change in public affairs between the 2d of May and the 3d of June. I need not attempt to describe the pleasing emotions with which these letters were received. I then believed no further hesitation or delay would take place in carrying my whole plan into effect, and that the difficulties which had before such period arisen had been occasioned by the contrivances and influence of hostile clerks, and doubts with which they and others had poisoned the mind of the Secretary with respect to my ability to fulfil my engagements—doubts which had been dispelled by the receipt of letters from the banks stating that they held a million of dollars on my account in readiness to be applied to the credit of the government the moment they received funded stock therefor.

But in a few short days these pleasing ideas and prospects vanished, and a series of new and unexpected difficulties again arose.

I received further letters from Mr. Campbell, stating that it was not practicable to order the notes of the banks to be received, agreeably to my proposition, and that the Treasury Department was averse to increase the number of their accounts with the banks.

This strange and most unexpected information, arising from remonstrances from Philadelphia, put an end to all my expectations, and destroyed my hopes of proving further serviceable in the cause I had so much at heart.

When the bank at Philadelphia discovered that I was negotiating with neighboring banks to have a portion of the patronage of government transferred from it to others, heaven and earth seemed to be invoked to counteract such an arrangement. Wm. Jones, of Philadelphia, who was a member of the cabinet, favored their views, and the sick Secretary at Washington lacked sufficient firmness to resist and trample under foot their artillery, the consequence of which was that the nation, as well as myself, became the victims.

I informed the Secretary of the Treasury that it was indispensably necessary that he should immediately give to the City Bank in New York and to the Mechanics' and Farmers' Bank in Albany one-third of the public business at those places, otherwise I should not be able to proceed in the affair. That, with respect to the other banks, I should not ask for patronage until we understood each other better.

On the receipt of these letters I put an end to my negotiations with the Philadelphia bank. I could not find much ability or disposition with individuals in the city to loan money to government or to any persons who wished to obtain it for such purpose. Philadelphia is rich in literature, in manufactures, in internal trade, in public stock, and in houses and lands, but the natural situation of New York will always secure to her as great a superiority over Philadelphia as a commercial city as Philadelphia has over New York in some other respects, and the best interest of both cities requires that they should not consider their respective advantages as any cause of ill will and jealousy. Each has great reason to be pleased with its own advantages, and it is always to be expected that where there is the most foreign commerce there will be the most active capital; and when a war takes place the more capital at liberty to be loaned to government. Consequently, when the government, in the utmost distress for money, appealed to the patriotism of the whole nation, it is not surprising that New York should have contracted to supply more than six of ten millions advertised for when Philadelphia only contracted to furnish \$236,000; yet the Philadelphians appeared mortified at such apparent evidence of the superior wealth of New York, and hence, I

suppose, arose a part of their desire that I should not succeed in furnishing the money which I had promised. This, however, principally existed among their coffee-house gentry, whose enmity to the republican party was the main cause.

During my stay at Philadelphia I applied to the persons whose offers at 85 had been refused, under the expectation of supplying them with stock, but was disappointed to learn that as many of them as wished had already been supplied by Mr. Whann with stock in the ten million loan at cost.

When the Secretary made his report to Congress, it appeared that he had been totally unable to obtain the required sum to make up the ten million, although he kept it open a long time, and supplied Cashier Whann with a portion, from time to time, as he could dispose of it. He also sold Robert C. Jennings, of Virginia, a part of it, and there remained on hand when he made his report on the 23d of September, 1814, \$204,944.

This at once unfolded additional reasons why I had not, at any period, been enabled to sell stock with all the benefits of the conditions to profit.

Nothing could be more manifest than that if persons wanting stock could, by applying to government, be supplied at the contract price, that the contractors could not dispose of theirs to any profit.

He was also an unsuccessful competitor with me for temporary loans from the local banks, and in the stock market in Europe, where, from the first, it was known I had calculated to operate without any such competition.

Coming into the market with stock, immediately after contracting with me, I consider a most cruel part of Mr. Campbell's proceedings, especially as he did not give me the least intimation that he had not succeeded in making the expected arrangement with Mr. Smith and Mr. Whann for the remaining million.

The impression in Philadelphia was that Mr. Campbell had been offered the whole at 85, and that the only inducement he had to allow the condition was the difference between 85 and 88.

They, generally, considered me unwise for paying so much for that condition, and on that account many persons who had offered at 85

would not take the stock at 88, with all the benefit of the condition.

Little or no pains were taken to correct the report that the whole ten millions were offered at 85 without the condition, and most republicans believed it true, because they wished it to be so.

The truth was, that there were only about seven millions offered at any fixed price, exclusive of that offered by me, as appears by the treasury report, vol. 2, page 845; and of that less than six millions on such terms as would have enabled Mr. Campbell to have accepted it at 85. Things soon began to change; the prospect of peace vanished; and stocks fell. The condition became likely to prove valuable, and the "Federal Republican," and other papers, endeavored to make the people believe that Mr. Campbell had made a bad bargain. The Philadelphians also came into this opinion, although they had originally most decidedly believed that the bad bargain was on my side; and, like the old woman who was never in the wrong, triumphantly exclaimed "I told you so." At the same time the "Federal Republican" was endeavoring to prove that Mr. Campbell had made a bad bargain. Its editor pronounced me ruined by the contract. He did not seem to suppose his readers possessed of sufficient sagacity to know that if Mr. Campbell had sold the stock to me too cheap that I had not paid him too much for it. Had peace, which was confidently expected, taken place before the second contract was made, the condition would not have benefited the contractors or stockholders one cent.

While at Philadelphia, I learned the fall of Bonaparte, which put the whole force of Britain at liberty to be used against the United States, which I knew would increase our expenses to a vast amount. My alarm became increased lest the public should, on that account, lose confidence in stocks, which would prevent my obtaining money to complete my payments. I succeeded in making an arrangement with McEwen, Hale and Davidson, a very wealthy, respectable, and honorable house at Philadelphia, for one hundred thousand dollars, and returned home. Soon after which I learned from the Secretary that he would give to the City Bank only one quarter of the public business in New York, instead of the one-third

which they required before they would let me have a dollar of the half million they had promised, and that indisposition had prevented his giving me this information at an earlier period.

[Extract.]

"NEW YORK, *sixth Month, 11th, 1814.*

"ESTEEMED FRIEND: I have this day been informed by the collector of internal taxes that he has not received any orders to deposite in the City Bank a portion of the money he collects. I therefore take the liberty of repeating my request that orders be given to him, and to all the other officers, to do a part of their business with that bank.

"They promise to loan me \$500,000, in the full expectation of having immediately one-third of the government business, and if they do not get it before the 25th of the present month they may disappoint me of that loan; and if I should meet with so serious a disappointment, at so critical a moment, it would be little short of ruin to me; and if that bank is to receive a portion of public business I cannot conceive the necessity for a day's delay.

"I am also anxious that the Mechanics' and Farmers' Bank, at Albany, should receive a portion of public business.

"To enable me to complete my first payment I had to sell a large amount of old stocks, which I was doing rapidly, at 86½ and 87, until Denis Smith heard of it, when he sent a large amount of similar stocks into our market for sale without limitation, which induced me to leave the market, notwithstanding which the brokers sold nearly all of his stock at 86; which, after deducting the brokerage and interest due on it, will not net him more than 84½.

"His sales were completed this morning, when I returned to the market and sold large parcels at 87, the purchaser paying the brokerage.

"If I had taken six millions, and kept Smith out of the market, I could have managed that amount more easily than I can five opposed by competitors, as I suppose that if Smith had not taken any in the ten million loan he would not have sold those old stocks under 88.

"I am convinced that we shall have a speedy and honorable peace, therefore lament the necessity I am under to part with a portion of my stocks.

"Sincerely thy assured friend,

"JACOB BARKER.

"GEORGE W. CAMPBELL, esq."

—
"BOSTON, *June 14, 1814.*

"FRIEND BARKER: I have received your letter of the 11th, by which I observe we are not to expect the pleasure of your company at Boston. I have been looking out for you some

days. I think we may expect peace; but I am not so fully convinced of that happy event as you are, or your people in general. If that event should take place we shall have no reduction upon our stock, in which case it will be more for my interest to buy the loan of 1812 at 86, upon which I still see $1\frac{1}{2}$ interest in fourteen days, which you will perceive is the case, as those purchases cost me only $84\frac{1}{2}$, besides several who I took stock for now wish to relinquish and I must take it; besides I think some very important news will soon arrive from Europe, which will influence me in determining whether to go further in the stocks or not.

"I will lay your letter before the meeting of the State Bank; perhaps they may think proper to accept your proposals, though I rather think they will not.

"I think with you there will be, and I think ought to be, a National Bank, and that the State Bank will surrender her present charter to this State government and become a branch of the National Bank; at least, this is what I wish. Please to write me frequently, and believe me,

"Your sincere friend,
WM. GRAY.

"JACOB BARKER, esq.,
"New York."

On my return from Philadelphia to New York, my first study was to close the business of the first instalment by accepting the scrip certificate bearing the condition with one instalment endorsed on them, and procuring from the Commissioners of Loans funded stock therefor, and delivering it to the parties who had promised the money. When I applied for the stock I found that the condition of further benefit had not been placed on the certificates, and that they did not bear evidence of the stock being more valuable than other six per cent. stock. It was as important as the rate of interest and the period of redemption—they were alike essential to appraise the purchaser of the value of the stock and on what they had to calculate. Without evidence of the condition in the hands of the holder its value would be of little avail in the market. Thus new difficulties presented themselves, for I had every reason to apprehend difficulty with the persons who had agreed to lend me money on my promising to secure them with stock bearing the condition. I had no time to lose in a further protracted correspondence, and, therefore, having no alternative, was under the necessity of receiving the stock without the

condition, and making the best terms in my power with the individuals who had promised it. While struggling to overcome these difficulties a letter was received from Mr. Campbell, dated 16th June, the fair import of which is a recognition of his promise to extend a portion of public patronage to the banks which should aid me in supplying the treasury with money; it infringes the promise he made me by giving one-fourth, instead of one-third, to the City Bank. The proposition was left with me to arrange, in no case to exceed one-third, the treasury retaining the right to judge of the goodness of the banks.

The City Bank, from which I calculated to have received a half million, availed of this variance, and presented me with a notice that as they had not obtained the third of the public business the contract between us was void, and that they would not lend me a dollar.

I succeeded in satisfying all those with whom I was dealing, and completed the payment of the first instalment. This business having occupied so much of the month, which I had intended to devote entirely to the raising of money for my second instalment, that I found it impossible to visit Boston, as I had contemplated, and return in season to raise the money in New York, in case I should find myself disappointed at the former place; I was, therefore, compelled to remain at New York, and to employ agents at other places, whose exertions were attended with the most trifling success.

"WASHINGTON, June 16, 1814.

"DEAR SIR: Your favors of the 9th and 11th instant have been received. I wrote to the City Bank on the 14th instant, stating the terms upon which deposits are made in other banks; and that upon their being agreed to on the part of that bank, a portion of the public deposits would be made therein; and I have this day written to Mr. Gilston to place in the City Bank, in a future, about one-fourth of the public deposits arising from customs, provided that bank agrees to said terms. By this arrangement the public deposits will be divided between those three banks, nearly in proportion to the capital of each, which places them on an equal footing. More could not with propriety be done for the City Bank, and ought not to be expected.

"Other business of importance, together with the delicate state of my health, prevented this business from being attended to at an earlier day.

"Every disposition is entertained to facilitate

the monied operations of those who engaged in the loan, and to evince a friendly disposition towards such banks as have been liberal in affording their aid to the government; but you were expressly informed that no stipulations whatever could or would be made on the subject of deposits, and that every application by a bank must depend on its own merits, considering the very small amount of revenue that is now received, and the great number of banks already connected with the treasury. It will be with much reluctance the number will hereafter be increased.

"The late extraordinary news from Europe will, it is presumed, raise the price of stocks. Peace on the continent must, in all probability, produce a *general* peace.

"My health still continues delicate.

"With much respect, I am, sir, your most obedient,

"G. W. CAMPBELL,

"JACOB BARKER, esq."

"P. S.—The instructions to collectors of internal taxes are given by the commissioner of the revenue. He will be directed to instruct the collector of internal taxes in the city to deposite a part of the public moneys in the City Bank, conformable to the arrangement made in relation to the collector of the customs, &c."

To which Mr. Barker replied as follows:

"I am favored with thy letter of the 16th; by the contents thereof, I am sorry to observe the course pursued towards me; I am satisfied that it does not arise from an indisposition to serve me, but from an idea that propriety requires it, in which I totally differ in opinion with thee; and it should be remembered that government will want more money, and that if the war continues they will find great difficulty in getting it; therefore, if there was not any other reason, that is sufficient to dictate, not only a liberal course towards those men who have a disposition and ability to supply the wants of the government, but such a course as will foster their ability, if not their disposition, to serve government; and the course pursued towards me is likely to destroy my ability to render further aid, however much my zeal for my country may resist its influence, and continue my disposition to render aid in the next loans. I am aware of my folly in agreeing to make the loan of five millions, without an absolute condition that the banks which might assist me should have at least all the favors mentioned in thy memorandum, and nothing but the most thorough conviction that they would get them as a free will offering, and that, considering the terms of thy advertisement, thee could not with propriety grant such a condition, induced me to make the contract without such a condition; for I always believed, and stated to thee, that it would be

impossible for me to procure a fourth of the money, without I could offer the contemplated inducements to the banks." "I hope and trust thee will reconsider this business, and by return of mail increase the business of the City Bank to one-third, and give to the Albany Bank one-third or one half of the business of that place. Trifling as the difference between one-fourth and one-third is, it is necessary to fulfil my engagements; and if I do not fulfill my engagements, I cannot expect the bank to fulfill theirs—and, besides, once let an individual or institution justly charge me with not having honorably fulfilled my engagement, and all the money lenders and public institutions will take the alarm, and magnify the offence so as to defeat all my future operations. I waive the favor asked by the Bank of North America, Philadelphia, and for the Bank of America, New York, and shall not make any further stipulations about government business until we understand each other better; but for the City Bank of this place, and for the Mechanics' and Farmers' Bank, Albany, I must entreat thee to do all I ask. Curtailing it, in the smallest degree, will be as fatal to me as to refuse altogether. On Saturday next, I have to pay the second instalment; a letter from thee, in answer to this, may be received before that day, and I beg thee to let me have a letter before that time, saying the City Bank shall have a third of the business. I cannot do without it. It distresses me to have thus to plead; and if selling the stock at any moderate loss would save me from this painful service, it should be done before I would, for a moment, appear in a soliciting attitude. It can only be done by a sale of the stock, and so large a sale could not be effected at 80. Stocks will not bear to be pressed on the market. I shall keep the market supplied with all it can bear without depressing the price. The City Bank has, in times of the greatest distress, furnished a million of dollars, in addition to what they had before done, without receiving a farthing's benefit from government; the other banks, who have been fattening on the favors of government for seven years, and who have never granted any favors to government, and who, at the time when the City Bank lent a million of dollars, did not lend but a fourth of that sum, therefore, instead of having less, I should think that bank should have more of the public business than the others."

[Extracts.]

"WASHINGTON, June 21, 1814.

"DEAR SIR: Your favors of the 17th and 18th instant have been received. You will have been informed by my last that instructions were given directing a portion of the public deposits to be made in the City Bank. It is not recollected that the Farmers' and Me-

chanics' Bank at Albany applied to this department, since I came into office, to receive a part of the public deposits; and, in fact, the amount of the moneys collected at that place is so inconsiderable that a division of it does not seem expedient; nor would the deposit of a part of it be an object of any importance to a bank. The question, however, has not been taken into consideration with the view of finally deciding it, the application from the bank not having been made.

"Instructions have been given to the cashiers named in your letter, and to some others, to receive such payments on account of the loan as may be made in their banks, and credit the same in the manner therein stated; being the only practicable mode in which the object you have in view could be effected without producing irregularity in the treasury accounts. This will, it is presumed, answer your purpose; a copy is herewith enclosed for your information.

"I think it proper, however, to remark to you that it is extremely inconvenient to make unexpected innovations on the mode of conducting the business of the loan; and nothing but a strong desire to facilitate the operations that relate to it would have induced me to accede to such a course on the present occasion.

"I trust you will meet with less difficulties than you seem to apprehend in completing your payments on the loan. You cannot doubt my disposition to do whatever appears to me correct, to enable you to effect that object.

"With much respect, I am, sir, your most obedient,

"G. W. CAMPBELL,

"JACOB BARKER, esq."

"P. S.—Since writing the above, your letter of the 19th instant has come to hand, in reply to which I must observe that it is impossible for the treasury, without inconsistency, to go further in ordering *deposits* in the City Bank than it has done. Ample justice has been done that bank—it ought not to expect more; and a due regard to justice and impartiality must be observed, whatever may be the consequences."

Mr. Barker wrote to the treasury thus:

[Extract.]

"NEW YORK, *sixth month*, 26th, 1814.

"DEAR FRIEND: The mail has arrived this day, and I have not received an answer to my letter of the 20th. Do reflect on my humiliating condition, and contrast it with what it would have been but for a mere trifle; nothing too little to deliberate on a moment; only the difference between the advantage to a bank in doing one third or one fourth of the public business at this place, the whole of which is scarce worth \$1,000. I do not mind defeat or misfortune, but it is truly mortifying to be

destroyed by a mere shadow. It will, however, if the war continues, prove the value that my services might have been to government far better than if I had succeeded.

"In the latter case my services would have been forgotten or never known by seven-eighths of the nation, and now, all will feel the ill effects of not getting the money that could so easily have been got through me.

"G. W. CAMPBELL."

The directors of the City Bank had assembled at my request. I appeared before them, pointed out the consequences that would inevitably result to the bank, then a very large holder of stock to the nation and to myself, if they withheld the anticipated aid, expressing the most confident opinion that the business of the treasury would be extended to their bank to the one third promised, and begged them to name the terms on which they would let me have the money; they did so, doubtless believing that it would be impossible for me to accept the required terms, which were that I should invest \$550,000 dollars in six per cent. stock at 88, and deliver it to the bank as a security for the repayment of the \$500,000 they proposed to let me have, and that I should add thereto \$450,000, and deposit the whole \$950,000 in their bank to the credit of government, to be drawn out as the treasury might have occasion to use it; and further, that I must return one half of the money thus lent me, if government did not, within twenty days, extend their share of the public business from one quarter to one third; to all which I promptly agreed, although it withdrew from my business for a whole year the capital of fifty thousand dollars in cash, in lieu of the note of fifteen thousand dollars, mentioned in our agreement, without my having any stock for it; and although the deposit of the additional \$450,000 to the credit of government in one of the other banks would have enabled me to procure from such other bank an additional loan of at least \$200,000, and notwithstanding it would subject me to a sale of my stock at a loss, to repay the half of the sum borrowed within the twenty days, if government did not extend its portion of the public business from one quarter to a third. A most trifling difference, yet it afforded an excuse for vacating a bargain which a change of public affairs had made the bank regret having made; thus circumstanced, it had a legal right to

make the best bargain in its power. If this one third had been originally granted, and surely I had every just claim and reason to expect it, all my difficulties with this bank would have been avoided.

Yielding it after having refused to do so, and after having notified the bank that the treasury would not increase their proportion of public business, went far to establish my right to demand it, and is the best commentary can be made on its being withheld.

Anticipating difficulty from having received scrip certificates on payment of the first instalment, as I wished to pay other instalments in other banks, I represented this difficulty to Mr. Campbell, and requested him to instruct the cashiers of other banks to receive the money and endorse it on the scrip certificates; in reply to which he informed me that I might pay the money in such other banks, and get them to place it to the credit of the banks issuing the scrip certificates, and who, on the receipt of a certificate of such deposit, would endorse the scrip certificates; and that he would by draft transfer the debt back to the bank where I paid the money, so that they might have the benefit of the deposit to the credit of government. This plan, although very inconvenient, obviated some of the difficulties, so far as it applied to my payments in this city, but rendered it very difficult to accomplish my payments at other places. With respect to the monies obtained from distant parts, I was obliged to furnish the stock as security at the same time of receiving the money. Now, by this arrangement, stock could not be procured until after the money had been paid at a distant place to the credit of the bank issuing the scrip certificates, and a receipt produced for it at such bank, when the cashier would endorse it on the scrip certificate, after which the Commissioner of Loans in this city would fund it, and the stock must then be returned to the distant place where the money had been procured before the promised security could be given. This difficulty prevented my obtaining large sums at distant places, therefore I was obliged to make all my payments in the banks in New York, excepting one hundred thousand dollars in the Bank of Cape Fear, and three hundred thousand dollars in a

bank at Albany. I considered the Treasury Department bound by the terms of our contract to grant funded stock at each place on the payment of the money, without going through the scrip operation, in my case a useless contrivance to embarrass my operations and defeat me, to which the Secretary yielded assent, (not perceiving the object,) on the suggestion that it would compel me to leave part of the stock as security. In the letter of contract I am put at liberty to pay the money in any bank I may name. On the receipt of that letter, I informed the Secretary that I would pay the money into such banks in the different parts of the United States as I could borrow it from, but that I could not name them before I had made my contracts with them, and he agreed to leave that part of the business open, desiring me to name them from time to time as soon as possible. I had, however, no time to dispute about the perplexities of forms, but continued my exertions to fulfil my contract with the City Bank and to complete the payment of my second instalment. Such payment I had the good fortune to accomplish and to pay a small amount in advance on my two last instalments, although most people on the exchange at Boston, New York, Philadelphia, and Baltimore, confidently calculated that I should not be enabled to raise the money on account of its exceeding great scarcity, and because it was impossible to effect any considerable sales of stock. The Secretary, having declined extending further the public patronage to the banks which were willing to lend me money, without which he knew I was not bound to furnish a dollar, imbibed the same opinion, and inconsiderately expressed it to John Donald, D. A. Smith, and David Parish, with whom he was endeavoring to negotiate a further portion of the loan, and probably to others.

I communicated every particular of my negotiation and contract with the City Bank to Mr. Campbell, and my success in paying my second instalment, and the following is the answer received from him:

“WASHINGTON, June 29, 1814.

“DEAR SIR: I congratulate you on having completed the payment of the second instalment announced in yours of the 27th instant, just received. It is hoped that all will do well.

It is not believed the late news is as alarming as the newspapers represents.

"With due respect, I am in haste, but not in full health, sir, your most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq."

Having completed such payments, it was necessary for me to commence my operations for the money to pay my third instalment, to accomplish which I was very anxious to visit Boston, but I was under the necessity of repairing to Washington, to get the Secretary to extend the business to the City Bank, from a quarter to a third; to bestow upon the Mechanics' and Farmers' Bank, at Albany, a third of the public business at that place; to extend patronage to such other banks as might assist me in pursuance of my original plan. I accordingly proceeded to Washington, where I arrived on the fourth of July, and immediately had an interview with the President of the United States, when I explained to him the course that had been pursued, and what was necessary to be done; he was knowing to the assurances given me by the Secretary when the contract was made, and approved of them; he sent for Mr. Campbell, they conferred together on the subject. The President pointing out to Mr. Campbell the consequences likely to result from the course pursued by the Treasury, that good faith required he should promptly carry out every assurance given me when the contract was made. Immediately after which, I called on the Secretary, when he promised to extend to the City Bank the business of the department at New York, making it one-third in place of one-fourth, and to confer on the Mechanics' and Farmers' Bank, at Albany, one-third of the business of the department at that place.

The Secretary stated, that he felt every disposition to accommodate the parties loaning moneys to government, and would take the matter into consideration, adding there was a great complaint in Philadelphia and elsewhere that he was favoring me; that he had received letters on the subject, and there always would be dissatisfaction at the smallest appearance of favoritism. I replied, that he knew the truth to be, so far from my having received the least possible favor from government, that I supposed he might put his mind entirely at ease upon that subject. The Secretary not having

replied to a letter which I wrote, complaining that the condition had not been put on the face of the stock, I asked his reason for omitting it. He replied, generally, that he meant at all events to do right; that his reasons for ordering the stock to be issued without bearing the condition on the face of it was, that the stock was to be permanent, and when the additional stock was issued the condition would be at an end, after which it should not appear on the stock, and once put on it, it could not be taken off.

He mentioned, that he had not the least intention of changing the rights of the parties by omitting it, and that it could not injure them, because they could prove their title without difficulty, it being a thing of public record, of public notoriety, contained in a circular letter to all the subscribers to the loan, and not a special condition with any particular individual.

Knowing that Mr. Sheldon had the principal arrangement of the detail of the business of the treasury department, and had the reputation of understanding it very well, and although it was manifest the person who had the arrangement of conducting the business with me understood very well how to reject every request I made, and how to embarrass all my proceedings, yet I applied to him, and desired him to cause such a course to be pursued as would prevent further perplexity. At the same time I pointed out to him, that if they had determined to break me down, they could not have pursued a course more likely to effect that object; to which he replied, that he had nothing to do with it; that he was opposed to the terms of the contract made with me, and as Mr. Campbell had thought proper to make it in opposition to his opinions, that he would not interfere with respect to the carrying it into effect; no motive could possibly exist to induce a wish of breaking me down, except it was to prevent the receipt of the money, and thereby to injure the administration and country.

Mr. Sheldon added, that he had the submission of the plans for conducting all the business of the department, but that he had not submitted, and would not submit, any plan for the conducting of this business, nor would he even read the letters I wrote to Mr. Campbell on the subject; that he had not read them, ex-

cept one or two, which he required him peremptorily to peruse. I replied to him, that however proper it was for him to give his opinion and advice to the Secretary before the contract was made, that I considered he, as a clerk in the office, was bound to do every thing in his power to carry into effect such contracts as the head of the department thought proper to make. I left him, and waiting on Mr. Campbell, informed him of the conversation with Mr. Sheldon, adding that it was no longer strange that I had been so much perplexed, since an experienced clerk in so difficult and extensive a business as fell to the lot of his department could at any time derange a portion of the business, without its being possible for the head of the department to discover it, especially if such principal had not occupied the station sufficiently long to become acquainted with its details.

The Secretary had been but a short time in office, during the whole of which time he had been in bad health. He was not experienced in the detail of the department, and although of industrious habits and with the best intentions, he was not, under those circumstances, equal to the task.

When he was appointed the office was in the most deranged state, having been for six months, in the absence of Mr. Gallatin, conducted by hostile clerks.

The duties of the acting secretary, as Secretary of the Navy, occupied nearly all his time in his own department.

The treasury was also almost destitute of money; its revenue inadequate to the discharge of the expenses of the war; the accustomed receipts greatly reduced by the restrictive system and the war.

The opposition took advantage of this state of affairs, and denounced Mr. Campbell as an ignorant backwoods-man.

On my return to New York, I found that information of the difficulty thrown in my way by the treasury had preceeded me from those persons who had repaired to Washington, and who were negotiating a new loan, and that it was already in possession of the Wall-street gentry, which greatly impaired my operations, and rendered it exceedingly difficult to perform the whole operation in relation to an instalment

under the regulations of the treasury in the one day prescribed.

"WASHINGTON CITY, July 14, 1814.

"DEAR SIR: Enclosed you will receive copies of two letters relating to deposits yesterday, written to effect the objects under consideration when you left this. Should we make no contract for a loan, in a short time we may advertise to receive proposals, &c. A certain portion of the fifteen millions, at least as much as was contemplated, will, however, according to our present views, be negotiated in Europe, probably by our ministers there. It is hoped prospects will brighten. There is nothing known to the writer of this to justify the editorial paragraph in the National Intelligencer of this morning.

"In haste, with due respect, I am, sir, your most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq."

For the purpose of gaining time necessary in which to obtain the money and transfer the promised securities to the lenders, I applied to the loan office to ascertain whether, if I paid in in anticipation, they would fund the scrip certificates before the day mentioned. They referred to their instructions, which being silent on that subject, but directed the date to be inserted in the certificate on which the interest commenced, they replied to me, that if I was willing to lose the few days' interest, they did not discover any objections to granting the stock. I therefore determined to pay a part before it became due, and, accordingly, paid about one hundred and fifty thousand dollars on the fifteenth, sixteenth, eighteenth, and nineteenth of July, which was endorsed on the scrip certificates, and the Commissioner of Loans issued funded stock for it, bearing interest from the twenty-fifth of July, the day I was bound to pay, as I preferred losing the interest for those few days to being embarrassed in my operations for the want of power to give security in time. The stock was transferred to my agents, McEwen, Hale and Davidson, of Philadelphia, who were to have furnished me with funds on it in season to have made additional payments on the twenty-fifth of July. The certificates were sent to the Treasury Department to be transferred to the Philadelphia books, when that department, after keeping them many days, returned them to the loan office in this city for the purpose of obtaining an explanation with respect to the interest

commencing at a period subsequent to their date. The Commissioner of Loans returned them to Washington with the explanation; the Treasury Department again returned them to him, stating that the business was irregular, that the certificates must be cancelled and new ones issued, which was done. Those new certificates were forwarded to Washington, and the warrants *erroneously* made out in the Treasury Department and sent to Philadelphia, when the Commissioner of Loans at that place refused to place the stock on the books, on account of an *error* which had occurred in the treasury office, and the certificates were returned again to Washington for correction before the stock could be used. These repeated blunders consumed between one and two months, disappointed me of the money on which I had calculated to complete the payment of the third instalment, and subjected me, by the fall of stocks during the period of such delay, to a considerable loss. This disappointment was not merely confined to the amount of such stock, it also locked up the funds which I had prepared to apply to secure the difference between 88, which I had paid for stock, and the low estimated value at which persons agreeing to furnish me with moneys had agreed to take it as collateral security. The only reason assigned for a delay, in its consequences so prejudicial, so fatal to me, was irregularity! And what was that alleged irregularity? Why nothing more than that I had paid the money ten days before it was due, and obtained the certificates dated when I paid the money. The amounts of the certificates, the time when the interest commenced, and every other part of the business was conducted in perfect conformity with the directions of the Treasury Department. Of this reason I was informed on the eighth of August, and on that very day treasury notes were negotiated on the New York exchange, which had been previously signed and issued to contractors at Washington, bearing date the eleventh of August, which proves that the business of a great department is not conducted by such rigid rules that it cannot in any case bend to circumstances.

At this period the inconvenience arising from not having the condition inserted on the face of the stock became much more serious than it had been. The public opinion had

undergone an entire revolution in relation to the probability of peace, and, consequently, with regard to the value of the condition. I was disappointed in carrying into effect contracts I had made for money, and prevented from making others, because it was not in my power to satisfy persons with whom I dealt, and who were not much acquainted with stock operations, that they would as certainly receive the benefit of the condition as if it appeared on the face of the stock. On applying to the banks which had assisted me for further accommodation, I was refused on the ground that for the money lent their bills had not been sent to the army, and applied for other payments of government, as they had expected, but instead thereof, the governmental agents who obtained drafts for it would, in some instances, immediately deposit such drafts in other banks, who would demand specie for them. And in other instances, the agents would draw the paper of the banks on which the warrants were drawn, and exchange such paper with the agents of other banks, for which they procured a premium; and the paper of other banks was taken to the army, and used for the purposes of government, while the paper of the banks lending money was immediately returned and specie demanded therefor. The difficulties before enumerated, and the general impression that government would still remain under the necessity of borrowing large sums, added to the blockade of our whole coast, the constant demand for specie, and the universal distress among merchants, rendered it extremely difficult to raise money or to effect sales of stock at any price. Stocks had very considerably fallen, and their depreciation was, in a great degree, occasioned by a report published in the newspapers that Mr. Campbell had, in the beginning of that month, given to Mr. Parish and others a refusal of a large amount of the twenty-five million loan for some days at 85, and that those gentlemen had declined his offer. The public stocks were, likewise, injured, on account of the protest of a number of bills drawn by the navy officers on the lakes, and which had been regularly accepted by the proper officer of government, and not paid when they became due. The payment of treasury notes to persons to whom government was indebted, and who, having long laid out of

their money, were glad to obtain them, and eager, from necessity, to place them in the market, where they sold for whatever price they could procure, was also another circumstance which greatly impaired the price of stocks, and enabled the money holders to derive great profit and advantage from the dealers in stock, whose necessities for money obliged them to sell. The "Federal Republican" pursued its course against me "with a step as steady as time and an appetite as keen as death." At this time it declared that I had failed in my two first instalments, although every dollar had been punctually paid, and every opposition in the power of too many of the party who supported that paper was made to prevent me from obtaining money. On this occasion I addressed the Secretary as follows:

"NEW YORK, 8 Month, 4, 1814.

"ESTEEMED FRIEND: I have not yet received any advice of the stock being placed on the books of Pennsylvania which I got funded, bearing interest from the 25th July, and transferred immediately after I paid the money, which was paid on the 15th, 16th, 18th, and 19th July. If the difficulties have not been removed, I beg thee to give early attention to this subject; the stopping of only a few thousand dollars deranges the whole business, as I find it, without any such embarrassments, very difficult to advance the difference between 88, and the price at which I have to sell or hypothecate the stock.

"I have borrowed of the Mechanics' Bank \$100,000, and agreed to receive it in their drafts, at sight, on the banks in Virginia, North and South Carolina, which drafts I wish to pay into the City Bank as cash. Will thee do me the favor to order G. B. Vroom, cashier, to receive them as cash? I cannot get them from the Mechanics' Bank until I get the stock for them, and I cannot get the stock until I get the scrip endorsed; therefore, if thee cannot order Vroom to receive them as cash, I cannot be benefited by the loan of the said \$100,000. When he has them, he can remit those drafts to the banks on which they are drawn, to be placed to the credit of the government, which will leave the business precisely the same as if I had paid the money into these southern banks.

"With esteem, &c.,

"JACOB BARKER.

"G. W. CAMPBELL."

The request contained in this letter was refused, by which means I was unable to convert the \$100,000 borrowed of the Mechanics' Bank towards the payment of my subscription to the loan.

"TREASURY DEPARTMENT, August 8, 1814.

"SIR: The only mode in which the sum of \$100,000, mentioned in your letter of the 4th instant, can be managed, is that which has been already adopted in relation to payments made by you on account of the loan into banks other than those where the scrip certificates were issued. The money must be credited to the treasurer, in the bank where the scrip certificates were issued, and placed to the debit of the bank where the payment is actually made. And on receiving notice of the banks, and the amounts respectively, thus debited, drafts will be furnished from the treasury to those banks, drawn on the bank where the money has been credited to the treasurer. But this cannot be extended to banks with which the treasury has now no accounts. It would be wholly impossible to conduct the business of a great department, when the mode of transacting that business and the forms through which it is to pass are to be subjected to continual variations.

"I am, sir, very respectfully, your most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq., *New York.*"

This letter, as the reader will observe, contains notice that no more money would be received in any bank with which the government, at the date of such letter, had not an account. The restriction contained in this letter destroyed my ability to make any considerable further loans, as no bank would loan me money for the purpose of being drawn out and deposited in other establishments, and the banks with which government had opened accounts were already exhausted by their loans to the public. I considered this to be a manifest violation of the understanding between the Secretary of the Treasury and myself; he could not comprehend the necessity for granting facilities to those engaged in supplying money, and like most men when disappointments occur, indulged the idea that fault was not at home; and he was misled by the supposition that I intended to throw stock into the market for the purpose of affecting the pending loan.

"WASHINGTON, August 11, 1814.

"DEAR SIR: The necessary attention to the current business of the office, with other causes, among which was occasional indisposition, has prevented me from replying to some suggestions and remarks in several letters received from you.

"It is not doubted that you have used your utmost exertions to effect the payment of the instalments on that part of the loan taken by you, and these exertions are duly appreciated,

but they will not justify the treasury in actions otherwise than it deems perfectly correct. Before I close, it may not be improper to notice an intimation given, it is believed, in one of your last letters.

"If it be intended to announce to the treasury that you are to throw stock into the market at this time for the purpose of depressing its price and thereby affecting the pending loan, the reply can only be, that such a measure must be considered altogether unjustifiable.

"I trust such a course is not intended. It would be a matter of regret that intimations to this effect, already announced, should be confirmed.

"With respect, I am, sir, your most obedient,

"G. W. CAMPBELL.

"JACOB BARKER, esq."

A most unfortunate and extraordinary interpretation, this, of my motive for selling stock, a sale rendered necessary by the extraordinary obstacles thrown in my way by the treasury, and by the impossibility to raise money in any other way.

The only reason which has, to my knowledge, been assigned for a belief that it was my wish to depreciate the price of stocks, arose from a mistaken supposition that it was my interest to do so; whereas, in reality, the very reverse was the case, inasmuch as stocks once depressed could not be advanced again until the conclusion of the war, or the adoption of great national measures, and I already held a large amount which I could not continue to hold for any considerable length of time, having borrowed money on it payable at an early day; and so much did I dread a depreciation, that I not only made every exertion to hold my stock, but on discovering others, who had subscribed, forced by the scarcity of money to sell a part of their stock to enable them to make good their payments, I entered into an agreement with Harman Hendricks, a very wealthy merchant who had liberally lent a large portion of his fortune to government—he was also an original contractor for the part of the ten million loan, and was therefore equally interested with me in keeping up the price of stocks—to borrow money on our joint security, and purchase up all the stock in the ten million loan which should come into the market below the contract price; in pursuance of this arrangement we made extensive purchases, the whole of which we held until after the second contract was made.

Notwithstanding this, the best of all possible evidence that the measures I adopted and pursued went to sustain the price of the stock, and that it was my manifest interest to do so, those opposed to my success continued to insist that it was for my interest to depress the market price, and that I was doing all in my power to effect that object; taking advantage of Mr. Campbell's sickness and ignorance of financial matters, they managed to poison his ear, and induced him to believe I had some such intention; those in his department constantly calling his attention to the fall of stock and such other occurrences as would be likely to make such an impression on his mind.

Nothing could be more manifest that, but for the scheme of issuing scrip certificates, all would have gone on smoothly and without the least inconvenience to the treasury. All it had to do, was to have ordered the loan offices at the different places where the money was to be deposited to have issued full stock, agreeably to the original contract, on the presentation of a certificate of deposit from an approved bank. All the machinery beyond this was a perplexing surplusage without the least utility; all accountants will see, at first view, that this was all that was necessary for the security of the government, and simplicity in keeping the treasury accounts.

The negotiation with Messrs. Astor and Parish having resulted without any arrangement or any loan from those gentlemen, the Secretary, on the 25th of July, sent six million, a further portion of the twenty-five million, to Europe for sale.

The following letter, received from the Comptroller of the Treasury, was not calculated to encourage me to expect a better state of things:

"WASHINGTON, August 10, 1814.

"DEAR SIR: You will perceive that Congress are called for the 19th of September. I presume that nothing can be inferred from this in regard to our future prospects of peace, either good or bad, only that about that period it may probably be known with tolerable certainty whether it is to be peace or war, and measures may be taken accordingly. It is probable, too, that the Executive now realizes (for it is impossible that he should not) the distressing deficiency which must then exist in our pecuniary means, and wishes Congress here to devise some mode of meeting this exigency, or at least to divide with him the

dread responsibility which this state of things brings with it, and perhaps for the purpose of merely "*doing something*," without any very distinct views as to what that *something* is to be.

"Yours of the 8th instant is received, and its contents noticed.

"The Secretary of the Treasury is really much unwell and looks *broken down*. I am a good part of the time but little better, indeed, my good sir, it is in truth pretty disconsolate and sorrowful times here, I can assure you.

"Your friend, &c.,

"EZ. BACON.

"MR. J. BARKER."

"NEW YORK, *eighth month*, 17th, 1814.

"ESTEEMED FRIEND: Will thee do me the favor, personally, to see the errors or embarrassment in relation to my stock removed. I do not know that the Treasury Department can save me, if not, it will be the most cruel sacrifice of an individual ever known. I say cruel, because I could easily have been permitted to have gone smooth through my business.

"Thy assured friend,

"JACOB BARKER.

"GEORGE W. CAMPBELL, esq."

After the receipt of the Secretary's letter, dated the 8th August, I ineffectually remonstrated against the requisitions it contained, and sent him vouchers for one hundred thousand dollars, which I wished him to receive at the Bank of Cape Fear, to which I received the following answer:

"TREASURY DEPARTMENT,
August 19, 1814.

"SIR: Your letter of the 13th has been received. The scrip certificate which you formerly enclosed to me was sent to the Cape Fear Bank, as you desired, and I suppose the arrangements in relation to it are in a course of completion. The scrip certificate enclosed in your letter of the 13th instant is herewith returned. No more money can be received in that bank, as we can make no use of it there, and that bank being out of the chain of connexion among the banks which we employ, we cannot draw the funds into other banks where they might be used. Though it will be very inconvenient, yet the treasury may, perhaps, authorize two or three banks at the eastward, not now connected with it, provided they are such as shall be approved, to receive monies on account of the loan. But in such case, as before, the monies must be placed in such banks to the credit of the bank where the scrip certificate was issued, and the same course taken as heretofore.

"There is so much inconvenience attending

these operations that you are to consider them liable at any time to be discontinued when the treasury shall see fit to put an end to them.

"I am, very respectfully, your obedient servant.

"G. W. CAMPBELL.

"JACOB BARKER, esq."

In this letter he refuses to receive \$100,000 for which I had already contracted in the Cape Fear Bank, although in the same letter he notices his acceptance of a previous \$100,000 in that bank, for which he had, of course, opened an account, but intimates that he *might, perhaps*, so far relax from the rule laid down in his letter of the 8th instant, as to receive it in two or three of the eastern banks with which the treasury was not then connected, reserving to himself the right of terminating such receipts at pleasure. This was altogether too precarious a basis on which to found any new contracts, and the refusal to receive money in the Cape Fear Bank, for the single reason that government could not use money there, had left me to make the best settlement in my power for the hundred thousand dollars which I had engaged to receive there. This refusal was the most unexpected thing imaginable, because, in addition to the right I supposed myself to possess of paying it there, and this right the Secretary does not question in his letter refusing it, but assigns a different and distinct reason for such refusal, I believed that the wants of the treasury were so great that they would be glad to receive it wherever they could procure it; and I had understood the government to be in so much distress for money, particularly in North Carolina, that the recruiting officers were under the necessity of turning off men who offered to enlist, for the want of funds to pay the bounty. The Cape Fear Bank is one of the best establishments in the Union, and its credit is not surpassed by any in North Carolina. The stock before mentioned as having been transferred to my friends at Philadelphia the middle of July, had not been placed in the books in Philadelphia. Unable to account for the delay in any other way than from its having to pass through the hands of federal clerks in the Treasury Department, not receiving any satisfactory reply, I repaired to Washington, when I found everything in confusion; nothing could be done until the fate of the loan for ten mil-

lions, which had been advertised for on the 26th July, to be closed on the 22d of August, should be known. It failed—no contract was made on that day. The President with his cabinet ministers left Washington on the 24th August, 1814. The British army entered that city on the evening of that day. The banks at Baltimore and in the District of Columbia suspended specie payments, and sent off their specie on the approach of the enemy. The hostile army remained in possession of Washington until the night of the 25th, when they evacuated that city, advice of which, from the tenor of the following letter, seems to have reached the President on the 26th.

"BROOKVILLE, *August 26, 1814.*—10 p. m.

"DEAR SIR: I expected this morning to have reached General W., and yourself, before your departure from Montgomery C. H., but was delayed, so that I did not arrive there till six o'clock, partly to obtain quarters, partly to be within communication with you.

"I have proceeded thus far in company with Mr. Rush, General Mason, &c., and avail myself of the bearer to inform you that I will either wait here till you join me, or follow and join you, as you may think best. Let me know your idea on the subject by the bearer. If you decide on coming hither, the sooner the better. Mr. Rush will remain here also; Mr. Jones is with my family and his own, on the other side of the Potomac, but will come to the city the moment he hears of its evacuation. General Armstrong and Mr. Campbell are, I understand, at Fredericktown. I shall give them immediate notice of the change in the state of things, and desire them to conform to it. A letter from General Smith, of Winchester, to General A., was put into my hands by express at Montgomery C. H., stating a brigade of militia could come or not, as might be desired. I have sent it open to General W., who can judge best of the answer proper to be given, and will act on the letter accordingly.

"Accept my best wishes, and great esteem,
"J. MADISON.

"JAMES MONROE, esq., *Secretary of State.*"

The cabinet ministers returned to Washington on the 30th; the Secretary opened a new negotiation for the six million loan, and on the 31st of August, 1814, they contracted with the officers of the District and Baltimore banks, and Dennis A. Smith, of Baltimore, for two millions two hundred and fifty-three thousand dollars, payable in the depreciated paper of those banks, on the 20th September, 10th October, 10th November, 10th December, one-

fourth each; with various other persons for the further sum of two hundred and seventy-seven thousand three hundred dollars. From this time forward the treasury conducted its business with depreciated bank notes, and treasury notes, which had also depreciated.

The National Intelligencer of the 1st September, 1814, announced that all the specie had been removed from the Baltimore banks; and in that paper of the 3d September, 1814, there was a publication from said banks, dated the 1st, announcing that they had suspended specie payments.

The day following the closing of the second contract, I entreated the Secretary to give such instructions to his subalterns as would enable me to receive stock for the money on its deposit in banks as had been agreed, to which I received the following reply.

"TREASURY DEPARTMENT, *Sept. 3, 1814.*

"SIR: Your letter of the 1st instant has been received, proposing to pay the balance due by you on the loan of ten millions on the days fixed for the payment of the instalments of the loan of six millions.

"I have consented to this proposal so far as to permit your payments to be received at the time fixed for the payment of the first instalment of the six million loan; and as this instalment, from circumstances which have recently occurred, has been permitted to be paid either on the 10th September, the day fixed by the public notification in relation to this loan, or on the 20th day of the same month, you are, in like manner, authorized to make your payments on either of those days; and the cashiers of the banks where your scrip certificates were issued have received instructions to accept the payment on either of those days.

"I am respectfully, sir, your most obedient,
"G. W. CAMPBELL.

"JACOB BARKER, esq., *New York.*"

On receipt of this letter, I applied to the Comptroller, urging him to give the necessary instructions; to which I received the following:

"TREASURY DEPARTMENT,

"*Comptroller's Office, Sept. 12, 1814.*

"SIR: Your letter of the 10th inst. was received by yesterday's mail.

"The Commissioner of Loans, at New York, has been instructed to issue funded certificates of stock, for sums remaining due from you of the third and fourth instalments of the loan of ten millions of dollars, provided payments of the same be made by you conformably to your late arrangement with the Secretary of the Treasury on that subject. That arrangement,

however, does not authorize the issuing, in any case, of funded stock on former payments, on account of the said loan, for the difference between the price at which it was taken and that on which a part of the six million loan has been recently obtained.

"No instructions, therefore, can, in the present state of things, be given from this office to the Commissioners of Loans, to issue funded certificates of stock for the amount of that difference.

"I am, respectfully, your obedient servant,
 "NATHAN LUFBOROUGH,
"Acting Comptroller."
 "Mr. JACOB BARKER, *New York.*"

Here we have a direct refusal to issue the supplemental stock due on the instalments paid, as well as a refusal to issue stock at 80 for the money to be received for the balance of the ten million loan.

Fatal consequences resulted to all parties from refusing to issue the supplemental stock, which government have, themselves, since decided the parties were entitled to on the 31st August. Of this supplemental stock, I was then entitled to three hundred and forty-nine thousand six hundred and ten dollars and thirty-five cents, and to have received stock at 80 for that portion of the five millions of dollars, for which the treasury had not heretofore thought proper to issue stock conformably to the original agreement.

On reviewing the whole of this transaction, it appeared to me one of the most extraordinary which had ever occurred.

A nation in distress for money to prosecute a war involving its very existence, allowing its employees to thwart and embarrass all its measures; a nation which had appealed in vain to the whole community through the newspapers for loans; pressed on every side by the enemy; expenses rapidly accumulating, hardly able to feed, clothe, or move an army. I have heard, and believe, that in July, General Izard was ordered to remove a portion of the forces from Plattsburg to the Niagara frontier, and could not, at that time, effect the measure for the want of money.

Under such pressing circumstances, the treasury not only refused that extension of public business, which might have commanded any amount of funds, but suffered the most perplexing embarrassments to arise in relation to the receipts of money; issuing and transferring

stock and other details of office; all of which. I most sincerely believe, may be ascribed to the employment of a large proportion of the clerks in nearly all the departments of government who were politically opposed to their chief.

The proper and obvious course which ought to have been pursued, after making the contracts on the 2d of May, was to have abstained from all further negotiation for money until another public offer had been deemed necessary; to have ordered funded stock, bearing the condition issued for the money, as soon as it was furnished; to have promptly given one-third of the public business to approved banks contributing to such loan; to have ordered the notes of such banks to have been received for duties and taxes, and to have received the money contracted for at such places as the parties wished to pay it. All this could have been done without delay, trouble, perplexity, expense or risk. Had this been done, I could have borrowed a sufficiency of money of the banks in different parts of the United States, with my other resources, to have supplied the government with all the money they had occasion for through the whole of that year; while withholding the condition from the face of the stock, and refusing a great portion of the patronage promised, and by perplexing the execution of the contract with useless forms and delays, government disappointed itself, intimidated and disgusted many of its friends, depreciated the price of public stock, and defeated the six million loan.

The parties from whom I had borrowed money on a pledge of stock were alarmed by its depreciation and by the treasury's thus refusing to carry into effect the terms upon which the loan had been contracted; they demanded further security or a return of the money. Withholding the supplementary stock was, therefore, very injurious; unable to obtain any satisfactory reason why it was not furnished, I was under the necessity of again visiting Washington, in the hope of being enabled to terminate this vexatious concern.

Congress had been convened for the especial purpose of providing ways and means. A national bank was deemed the only alternative; the President, Secretary of the Treasury, Secretary of War, and, I believe, every member of the cabinet, had become convinced that such

an establishment was absolutely necessary to sustain the nation, hence constitutional—that it would command the major part of the circulation of the United States. Its bills, being receivable for taxes, imposts, and for lands, would get a preference over the bills of local banks; applying them to the use of the United States, in place of lending them to individuals, would furnish the government with a hundred millions of available funds over the necessary amount of specie for their redemption.

Previous to my leaving home a petition to Congress for the establishment of a national bank had been prepared, to which I obtained the names of many of our most respectable and wealthy citizens of both political parties, and forwarded it to Washington; it was presented to both Houses of Congress, and referred to the Committee of Ways and Means.

In promoting this petition, John Wells, esq., was again very active, as was Isaac Lawrence, a republican merchant of great wealth and respectability.

On my journey to Washington, I learned from the National Intelligencer that Mr. Campbell's bad health had compelled him to resign, and on my arrival I was informed he had left the seat of government for his home in Tennessee. I also learned that his health during a long time had been so much impaired as in a great measure to prevent his attention to business. Samuel H. Smith had been appointed acting Secretary. I therefore applied to him, stated the hardship of my case, and requested him to direct the supplementary stock to be issued. He expressed great unwillingness to interfere in the business, but promised to examine the case and ascertain whether anything could be done. The next day he informed me that he had concluded to leave it until a Secretary was appointed. I also applied to the Attorney General, who stated that it would be improper for him to interfere, but that if Mr. Smith desired his opinion on any points relative thereto, he had only to ask it and it would be promptly given. I also applied to the acting Comptroller, who informed me that he could do nothing in the business without directions from the Secretary of the Treasury. I met Mr. Sheldon and mentioned the business to him; he replied,

I suppose you are not willing to give a receipt in full on receiving the difference between

80 and 88." I informed him that he supposed very right, when he added, there must be an end of the condition, and if could not be done in any other way, that application would be made to Congress to have the law repealed. Such a measure I thought would be so manifest a violation of national faith, that I replied indignantly, "You had better attempt such a thing." Feeling a perfect confidence in the honor and integrity of government, such an intimation from Mr. Sheldon, who, I believed, would gladly see the administration disgraced, gave me no uneasiness. I considered that the government were bound in honor to borrow money under the law authorizing the loan, from time to time, as it might be wanted, and opportunity presented of getting it, until the whole had been obtained; and that the stockholders in the ten million loan would be entitled to have their respective amounts at the lowest rates which should be allowed for any part of it.

My business in relation to the loan being thus suspended, I had leisure to attend to the subject of a national bank, which I considered of the utmost importance to the nation. It appeared to be the only way in which means could be obtained sufficient to prosecute the war to a successful issue. Without such a termination I had not any expectation of being enabled to obtain the original cost of my stock. I accordingly waited upon the individual members of the Committee of Ways and Means, to whom the petition had been referred. I was informed that they had unanimously agreed to recommend such an establishment, (their chairman, Mr. Eppes, a republican member of Congress from Virginia, of great talents and purity, excepted, who was opposed to it from constitutional grounds.) The Hon. Mr. Fisk, of Orange county, New York, one of the committee, was charged with preparing a bill.

With this gentleman I had several very friendly conversations respecting the details of a bill which I had submitted to his consideration, the important principles of which were, that the whole capital should consist of stock, with which the notes to be issued by the bank should be redeemed at the same price as the bank allowed the government for it, so long as government were indebted to the bank more than half the amount of its capital; no injustice

in this, because all who should be offered the notes would know on what they had to depend, and might reject them if they chose. When the debt should be reduced below half the amount of the capital of the bank, to pay specie, the directors to be left to procure the specie on account of the bank; no specie to be required from the individual stockholders; the bank to loan as much money to government as it should require; the duties and taxes to be received in the paper of the bank; the mother bank to be established in New York; the first set of directors to be named in the bill. I was very anxious that no part of the capital should be required to be paid in specie, because I apprehended it would cause paper money, generally, to depreciate, and because I did not perceive any advantage likely to result from requiring it. It is impossible for a national bank to relieve government and pay specie before the other banks in the United States resume such payments; and when they do that, the directors of the national bank could easily supply themselves. My reasons for wishing the bank bound to loan to government as much money as it might require were, that loans to individuals might be restrained; that such loans might not be subject to the caprice of directors; and confident that it would not require more than it could use without depreciation, and a belief that the more the bank lent the United States the better it would be for the stockholders. I was also very anxious for the first set of directors to be named in the bill, because in that case the bank would go into immediate operation, and supply the present necessities of government; whereas, if they were left to be chosen by the stockholders it would protract that relief at least six months, when a month's delay might be fatal to the nation; and because I was very unwilling to leave the control of an institution of so much magnitude to chance, lest that chance should put it into the hands of our political enemies, who might either refuse to carry the law into effect or use the funds of the bank, when established, for political purposes, or to subserve the views of favorites, or who might either refuse to place a branch in any southern or western State, or, if they placed a branch there, appoint our political opponents to direct its affairs; and as New York has, in time of

peace, a commercial intercourse with the southern States about ten times as great as Philadelphia, with the eastern States fifty times as great, and with Europe about double, I supposed her entitled to have the mother bank; for the only reason why it should not be placed at the seat of government was that it is supposed necessary to place it in a commercial city, that its affairs may be conducted by merchants and intermingled with commerce.

While I was thus occupied, Alexander J. Dallas, of Philadelphia, a lawyer of great eminence, was appointed Secretary of the Treasury, a triumph of Philadelphia over New York. I did not wish a Secretary to be taken from New York, and very much regretted that he should be taken from Philadelphia.

Mr. Dallas entered on the duties of his office on the 13th October, 1814, full of the notion of establishing a national bank at Philadelphia, and alarmed lest it should be located at New York, a vote to that effect having passed the House of Representatives.

On coming into office, Mr. Dallas determined to annul the condition allowed the holders of funded stock in the ten million loan.

Immediately after his installation I addressed to him a letter, of which the following is a copy:

"WASHINGTON, *October 15, 1814.*

"RESPECTED FRIEND: I herewith beg leave to hand the draft of a bill for the establishment of a national bank. The fourth, tenth, and twelfth sections contain the leading features of the plan. I am one of an association who are now petitioning Congress for an act of incorporation for banking purposes, for whom I beg leave to solicit thy interest, and, at the same time, I take the liberty of stating that I believe it impossible to relieve the necessities of the nation without the establishment of a national bank, or without making paper money a legal tender. Adopt either of these measures and we shall not have anything to fear, but everything desirable to expect, from the continuation of the war.

"I represent important claims on the government, which cannot, I fear, be paid until the treasury is replenished, therefore I do not wish to press these subjects on your attention at this early period. I, however, beg leave to enclose some letters on the subject from the parties concerned, that you may look over them at your leisure; but being in the most awful distress for a decision on the stock in the ten million loan, I must solicit to be heard on that subject as soon as it can be allowed without

interfering too much with other business. The delay which has already taken place has produced the worst consequences to the public interest, and little short of destruction to me. The parties were, in my opinion, entitled to a decision on the 31st August, and on that day I understood from the Secretary of the Treasury that it was made; after which, the first clerk in the Treasury Department, Mr. Sheldon, infused doubts and fears into his mind, the consequence of which was, that he neither directed the stock to be issued, nor gave an explanation to the parties by which they could know what view he took of the subject, and we have, therefore, been kept in a state of uncertainty—unable to make any stock operations since that period without the most ruinous sacrifices and perplexing conditions to all contracts. And nothing is more easy than to adjust the business to the satisfaction of all the parties, and conformable to reason, justice and the public interest and convenience.

"Very respectfully, I have the honor to be your assured friend,

"JACOB BARKER.

"The Hon. ALEXANDER J. DALLAS,
"Secretary of the Treasury."

In a day or two I again mentioned the subject of supplemental stock to Mr. Dallas, when he told me he had been reflecting upon it, and wished to know when the condition would be closed; I replied, not until the whole twenty-five millions had been borrowed. He said that he should not leave it open, and that after a reasonable time it must be closed, but that he was so much pressed with other business that he could not attend to the subject at that time. His observations afforded me considerable uneasiness, because I had fondly calculated that he would have ordered supplementary stock issued to the extent of the admitted difference between the two contracts the first day he came into office. It appeared to me to be so clear a case, and so unconnected with all other parts of the business, that his enquiring mind would have understood the subject at first view, and that his usual promptness would have been displayed on this occasion. If he had not any other inducements to do so, I supposed the necessity he would find himself under of immediately resorting to loans would urge him to it, as he could not calculate to be enabled to borrow any more money while so large a portion of the money lenders considered themselves denied common justice. I was mistaken, he was too much occupied in preparing a financial plan for the Congressional Committee of

Ways and Means to attend to me. He very soon presented to that committee his views, in which, among other things, he recommended the establishment of a national bank at Philadelphia, presenting a bill in which it was provided that all directors should reside at Philadelphia, or in its neighborhood. This at once convinced me that the New Yorkers had not much to hope from the new Secretary.

As soon as this bill was received, the Hon. John W. Eppes, a member of Congress from Virginia, the chairman of the Committee of Ways and Means, invited me to a conference on the details of the bill. On my pointing out the restricted residence of the directors, he observed that it would be immediately stricken out. On the same day I enquired from Mr. Dallas what the New Yorkers had done to disqualify them for directing the affairs of a bank. He appeared not to comprehend the question. On being informed of my interview with Mr. Eppes he seemed to be much disconcerted.

I continued to urge him to cause the supplemental stock to be issued. He replied that it was a very troublesome affair, and that he would refer some questions respecting it to the Attorney General, and have it settled as soon as possible. The trouble was how to get rid of the condition, and to deprive me of the benefit, past and future, to be derived therefrom, otherwise he would have left the stock as it was, and ordered supplemental stock to be issued to those who held the original stock according to the books of the treasury when the more favorable terms were allowed, bearing interest from the time the money was received.

The Secretary says, among other things, in his statement of the case, submitted late in October, 1814, to the Attorney General for his opinion: "There remains a considerable sum of the twenty-five millions of dollars, authorized to be loaned, for which proposals have not yet been invited, but they probably will be invited soon."

In place of continuing to borrow under the twenty-five million law, until the whole amount was obtained, he applies to Congress for a new law authorizing a loan of three millions of dollars, which Congress passed on the 15th of November, limiting its application to the precise purposes to which the twenty-five million loan

was to be applied; the 1st, 2d, and 8th sections of that law read as follows:

SEC. 1. *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the President of the United States be, and he is hereby, authorized to borrow, on the credit of the United States, a sum not exceeding three millions of dollars, to be applied, in addition to the moneys now in the treasury, or which may be received from other sources, to defray any expenses which have been, or during the present year may be, authorized by law, and for which appropriations have been, or during the present year may be, made by law.

SEC. 2. *And be it further enacted,* That the Secretary of the Treasury, with the approbation of the President of the United States, be, and he is hereby, authorized to cause to be constituted certificates of stock, signed by the Register of the Treasury, or by a commissioner of loans, for the sum to be borrowed by this act, or for any part thereof, and the same to be sold. And the Secretary of the Treasury shall lay before Congress an account of all the moneys obtained by the sale of the certificates of stock in manner aforesaid, together with the statement of the rate at which the same may have been sold.

SEC. 8. *And be it further enacted,* That it shall be lawful for any of the banks in the District of Columbia to lend any part of the sum authorized to be borrowed by virtue of this act, anything in any of their charters to the contrary notwithstanding.

On the same day that this law passed, the Treasury advertised to borrow under it, although the twenty-five million loan had not been half exhausted, proposing to receive in payment treasury notes or approved bank notes.

The reader will observe that, by this new law, the suspended Banks of Washington were authorized to lend the whole three millions, and as they had no specie, and did not pretend to pay specie, the loan was, of course, to be in their depreciated notes.

On the 22d of October, he put in my hands an opinion he had obtained from the Attorney General, mentioning that he had adopted it, and would carry it into immediate effect; and stating further, that he should require a release of all further abatement from all the parties before he would give them the stock; the Attorney General considering that the condition in the letter of the Secretary of the Treasury of the 2d May, 1814, to the subscribers for the ten million loan, was closed on the 31st August, 1814, and no longer remained open,

and executory subject to all the variations in price which might mark subsequent loans, until the whole twenty-five millions should be exhausted. I replied to this that the Attorney General's opinion appeared to me correct, except with respect to the business being closed; and, as it would be time enough to discuss and settle that point if any more of the loan should be taken at a further reduced price, I presumed that he would not insist upon a release, assuring him that no earthly consideration would tempt the parties to disgrace themselves so much as to sign an instrument releasing government from a claim which they considered just, without receiving therefor the least *quid pro quo*; he, however, appeared determined to insist upon it. On the same day I presented him with a letter, of which the following is a copy:

"WASHINGTON, October 22, 1814.

"RESPECTED FRIEND: Your decision this day in relation to the difference between 80 and 88, perfectly accords with my view of the subject, and with the expectation of all the parties, so far as to issuing additional stock for that difference to all those persons, who, by the books of the several commissioners of loans, held stock in the ten million loan on the 31st August last; but I am confident that you, on reflection, will not insist on a release from further allowance, because the stock has repeatedly changed proprietors since that time, and a release from the persons who are entitled to the present difference would not be binding on any other persons, and it is totally impossible for them to procure a release from the persons who may be proprietors when the next lower contract may be made; if there is a good claim for the chance of a further abatement, there cannot be any reason why that claim should be abandoned; if there is not any claim there cannot be anything to release. The government are not under any obligation to allow any more favorable terms, and, if they do so, they will certainly be aware of the consequences and take their measures accordingly; and, as no legal claim can be supported against government, they have not anything to fear; if a subsequent claim should be made, they will then decide on the equity thereof; and if, in the estimation of government, equity should be on the side of the claimants, they would not for a moment hesitate to conform thereto; and if it should be on the side of government, the claimants must abide a decision against them.

"Very respectfully, your assured friend.

"JACOB BARKER.

"Hon. ALEXANDER J. DALLAS,

"Secretary of the Treasury."

On the twenty-fourth, I called on the Comptroller, and finding that he had not been in-

structed to issue stock in any shape, I apprehended that new difficulties had arisen. I wished, therefore, to obtain a copy of the Attorney General's opinion, because it expressly stated that parties were entitled to supplementary stock, on the *31st of August*, which was the *grand point* for which I had contended, and justified all my complaints with regard to its not being furnished on *that day*; and this opinion Mr. Dallas told me he had adopted, and should carry it into effect, when I addressed to him a letter as follows:

"WASHINGTON, *October 24, 1814.*

"Will you be so good as to favor me with the Attorney General's opinion. I wish to take a copy of it, and I will return it to you this evening.

"Yours, truly,

"JACOB BARKER.

"Hon. A. J. DALLAS,

"*Secretary of the Treasury.*"

The copy was furnished, in which, among other things, he said:

"I believe that looking to Mr. Campbell's letter of the 2d May, 1814, with a view to its fair construction on behalf of the public creditors, the first lenders are entitled to the benefit of the terms of the second loan to the whole amount of their subscriptions. Its language could scarcely fail to have awakened in them that expectation.

"I think that the owners of the previous stock, at the time the second loan was made, were the persons entitled to the additional stock for the difference between the price of the first and second loans."

A number of days elapsed without my making any further progress in the business, when I sent another note to Mr. Dallas, of which the following is a copy:

"NOVEMBER 5, 1814.

"Mr. Barker will thank Mr. Dallas if he will inform him if there is any chance for the order to issue this day for the additional stock. To-morrow being Sunday, induces him again to call your attention to this subject, in the hope of avoiding a further delay of two days, which will take place if that question is not settled this day."

To which I received an answer, of which the following is a copy:

"NOVEMBER 5, 1814.

"The pressure of public business has rendered it impossible to attend to all the cases of the ten million loan. So far as respects the parties in whose cases no difficulty occurs

beyond the execution of the attorney general's opinion, I propose to issue the necessary instructions to the Comptroller on Monday.

"A. J. D."

By the tenor of this note from Mr. Dallas I observed that he intended to proceed to issue supplemental stock in the ten million loan on the Monday following to those who did not hold such stock under my contract.

I applied at the Comptroller's office, and continued my application daily, without success, until the tenth.

In a conversation with the acting Comptroller on the subject of the business, he assured me that there should not be any delay after he received the necessary directions, but that he could not do anything without orders from the Secretary of the Treasury. I desired him to speak to the Secretary, as the business appeared to be neglected, and I apprehended it was the effect of Mr. Sheldon's hostility. Mr. Lufborough replied that it would be improper for him to interfere before he got orders, and that he knew Mr. Sheldon was very much opposed to this business; that he (Sheldon) told him that he had not only opposed the making of the contract, but the whole business in relation to its execution, from beginning to end. At this conversation Richard Cutts, esq., the brother-in-law of the President, was present.

On the tenth of November, I met in the street the Hon. Messrs. King, Gore, and Mason, of the Senate. One of them congratulated me on my success; I replied that I was not conscious of having been successful. He then enquired, Why, have you not got your money? by which I supposed he meant the supplementary stock. I informed him that the treasury had not, to my knowledge, decided on the business. Yes, he observed, they have decided in your favor; the Secretary has examined into the business, and says you have a good claim. Mr. King now remarked that he himself had examined into it with great attention, and that the case appeared very clear in my favor—so much so, that he could not imagine why a doubt upon the subject had been indulged. Nothing further was done by me in relation to the loan until the 17th, when I called on Mr. Dallas, and informed him that the holders of funded stock would not receive

the supplemental stock unless it bore interest from the time they paid the money into the treasury, and expressed a wish to have a further conversation on the subject. He replied, Do you wish to say anything more respecting the declaration to be published? adding that he had decided, and could not hear anything more concerning it. I told him that if he would give me but a moment, I would confine myself to the single question, When shall the interest commence?—that I considered myself entitled to be heard; that he had promised to hear me before he finally decided; that I had been seven weeks at Washington waiting on the treasury for a decision; that he had been in office five weeks of the time, and been so much occupied that he had not devoted a single half hour to hear my explanations; that whenever I did call upon him our conversation was interrupted by others; and that, unless he would set apart an hour to investigate the subject, I could perceive no end to it. To this he replied that he was then much perplexed in relation to paying some treasury notes which were becoming due in a day or two at Philadelphia, and had not time to attend to the business at that moment; but that he was entirely guided in respect to it by the Attorney General's opinion. I then desired him to state the question to the Attorney General, and obtain his answer that day, for I was in great distress for the stock. He replied, "Take the original opinion back to the Attorney General, and let him correct it if it is wrong."

Mr. Dallas was in error in supposing the Attorney General had decided the point in question; the Attorney General's opinion did not notice the subject of interest. I proceeded to the Attorney General, with his original opinion, and informed him that in making it out he appeared to have been silent on that point. He took it back, and, after entering into a critical examination of the case, he made an endorsement on the paper containing his original opinion, as follows:

"NOVEMBER 17, 1814.

"The Secretary of the Treasury having further asked from what period the supplemental stock should bear interest, I answer that I think interest ought to commence upon and from the dates, respectively, at which interest began to accrue upon the primary

stock, to which the supplemental is the increase.

"A. RUSH, *Attorney General.*"

On handing it back to me he observed that he supposed Mr. Dallas would not like it; that he expected him to decide everything according to the views of the treasury, adding, "Yours is the hardest case that has come before me since I have been in office. I wish I could do something for you."

Here I beg leave to remark that the Attorney General always attended to the part of the business allotted to him without the least delay; that he heard all my explanations patiently; appeared to regret the delay which had taken place—particularly that the supplemental stock had not been issued on the 31st of August; was prompt in all his decisions, and polite in all his deportment. I feel particularly called on to say this because he merits it, and because I differ with him decidedly in opinion on some of the points he determined—in judging of which, however, it is to be remembered that he is the law officer of government, and considers himself bound to decide all doubtful points in its favor.

I returned the Attorney General's decision, together with the opinion he had just expressed in relation to the interest, to Mr. Dallas, who, after perusing it, handed it to Mr. Sheldon, with instructions to make the necessary alterations in the letter to the Comptroller. Mr. Sheldon read it and observed that in consequence of the alteration it would take another week to settle the business. I replied, "If it takes another year, justice must be done; and I will thank you, Mr. Dallas, not to permit such delay." He very politely answered that it should be attended to that morning.

Some delay took place, and I called on Mr. Dallas again on Saturday, when he informed me that a circular had been prepared to the Commissioners of Loans, where loan offices were established, ordering them to call in all the funded stock in the ten million loan, and to give in exchange new certificates, declaring on their face that the supplemental stock had been issued, requiring from each holder a receipt in full for the condition, with the notice that it did not remain open subject to the fluctuation which might mark contracts for further portions of the twenty-five million loan, and

that he had sent this circular notification to the National Intelligencer for publication, and that it would appear in that paper on Monday morning:

"TREASURY DEPARTMENT,
"November 19, 1814.

"SIR: Enclosed you will receive a copy of the opinion of the Attorney General on the legal construction of the contract or contracts made by the late Secretary of the Treasury on the 2d May, 1814, for the loan of ten millions of dollars, and of a notification issued from this office founded upon it. I beg leave to request that you will cause the necessary instructions to be given to the several Commissioners of Loans for issuing the additional stock conformably to the opinion of the Attorney General and to the said notification.

"I am, respectfully, sir, your obedient servant,

"A. J. DALLAS.

"To the COMPTROLLER of the Treasury."

On the same afternoon I was in conversation on the subject with Mr. Gholson, a member of Congress from Virginia. He expressed much regret at the course proposed to be pursued by the Secretary; said it would disgrace the administration, and that, although a poor man, he would rather give a thousand dollars than such a publication should be made, and urged me to ask of the President to interfere to prevent it.

I did so. The President expressed much surprise at the course pursued by the treasury; said that it was in a measure independent of him, as it had to report direct to Congress, therefore he was very unwilling to interfere with the details of the department. Yet the proposed course seemed to be so extraordinary, that he would see Mr. Dallas that evening on the subject, and he did so.

Not hearing anything further on the subject, and unwilling that the circular should appear without my objections, I prepared a protest, and took it to the office of the National Intelligencer, where I was informed that the circular had not been received.

I waited for it until late in the day, when I understood that if the notification came after that it would be too late for Monday's publication. I dare not leave the protest, lest by some accident its publication should precede that of the circular.

Happening to dine at the same table with Mr. Dallas on the following day, he observed that he had good news for me. I inquired what it was. He said he had concluded to issue the supplemental stock without requiring any release from the holders. When I remarked that I apprehended that it was too late to do much good, that the publication of the Treasury circular which he had informed me the previous day he had sent to the National Intelligencer would injure the market price of the stock about as much as to require a release from the holders, he replied that it would not be published. Not having any clerks at hand on that day, being Sunday, he had been himself down to the printing office and withdrawn the circular, and had it then in his pocket. I inquired of him what had brought about such a sudden and wonderful change. He said: "I have seen a friend of yours, in whom I have full confidence, who understands the merits of the whole transaction, about which I find I was uninformed when I came into office." He declined to tell me who that friend was. I knew that it was the President. On the following day he, through his clerk, Mr. Sheldon, directs the Comptroller to suspend the measures for completing the execution of the contract relating to the ten million loan, in words following:

"NOVEMBER 21.

"Mr. Dallas, late on Saturday, directed the measures for completing the execution of the contract relating to the ten million loan to be suspended. The Comptroller is requested not to issue the instructions to the Commissioners of Loans until further advised on the subject.

"D. S."

The proposed circular notice stating the Comptroller's plan, thus annulled, not having been published, I cannot give copies. That an important change was made therein is manifest from the tenor of Mr. Dallas's letter to the Acting Comptroller on the following day, viz:

"TREASURY DEPARTMENT,
"November 22, 1814.

"SIR: I have received your letter dated this day, relative to the execution of the contracts for the ten million loan.

"When I arrived at Washington I attended to these contracts, in which no difficulty occurred, as the contractors had fulfilled their engagements. It was in relation to these cases

that the opinion of the Attorney General was taken.

"At a subsequent period I attended to the contracts in which difficulties were supposed to exist; and on these cases I submitted the views of a settlement to the President, who signified that he saw no objection to the mode of settlement proposed.

"Of the Attorney General's opinion and of the views submitted to the President you have copies.

"It is only necessary to add that all the subscribers to the ten million loan are placed on the same footing with respect to the instalments actually paid; that the Attorney General's opinion is to be carried into effect, so far as respects the persons entitled to the supplemental stock; but that it is not deemed proper to insist upon a release before the supplemental stock is delivered. In this last respect the government will act upon its rights, without claiming any concession from the creditors which might hereafter be considered a sacrifice on their part.

"I am, very respectfully, sir, your obedient servant,

"A. J. DALLAS.

"N. LUFFBOROUGH, esq.,
"Acting Comptroller."

By this letter it appears that Mr. Dallas intended to have refused supplemental stock to those deriving it from my contract and giving it to others; that he had found out that there was not any cause for any distinction, and that the holders of funded stock were all entitled to it without executing a release for further issues.

Mr. Luffborough, being discomfited by this order to discontinue proceedings against me, made a second application to Mr. Dallas, to which the Secretary replied as follows:

"TREASURY DEPARTMENT,

"November 22, 1814.

"SIR: I have just received your second note of this day's date, relative to the execution of the contracts for the ten million loan.

"Pursuing the principle that the construction given to the contracts by the Attorney General is to be carried into effect without impairing the rights or embarrassing the remedies of the creditors, I mean that the supplemental stock shall issue in such form and manner as on the one hand to avoid any appearance of acknowledging at the treasury that the contracts remain open, and on the other leave the creditors every proper facility to establish hereafter the identity of the supplemental stock, and its connexion with the ten million loan. Although I am not yet, perhaps, master of all the details of office, I presume the best mode of accomplishing the object which I have stated

will be to leave the certificate of original stock as it now stands, and issue a new certificate for the supplemental stock only.

"I am, &c.,

"A. J. DALLAS.

"N. LUFFBOROUGH, esq.,

"Acting Comptroller."

Here Mr. Dallas comes fully into my views in relation to allowing the existing stock to remain as it was he was right when he said the "best way of accomplishing the object will be to leave the original stock as it now stands;" there was not any occasion to distinguish the supplemental stock from the original, and if there had been any, the word "supplemental" would have been a full distinguishing mark; yet he allowed himself to be overruled by the acting comptroller, who withheld the supplemental stock until the 7th of December, the date of his order for its issue, although the Attorney General decided, on the 22d October, that it was due on the 31st August to the then holders of the original stock, which opinion the Secretary adopted; the acting comptroller also insisted on the surrender of the original stock, although the Secretary said, the best way was to leave it as it was, and otherwise pursued a course avowing his object to be to destroy the market value of the condition, as follows:

"TREASURY DEPARTMENT,

"Comptroller's Office, Nov. 24, 1814.

"SIR: I take the liberty of enclosing, for your approbation, forms of certificates proposed to be printed and issued to the holders of stock in the ten million loan, pursuant to the opinion of the Attorney General enclosed to me in your letter of the 19th instant.

"These forms have become necessary, in order to carry into effect that part of your letter to me of the 22d of this month, which requests that every proper facility may be afforded to the holders of certificates in the above-mentioned stock, 'to establish hereafter the identity of the supplemental stock,' (now about to be issued to them,) and its connexion with the ten million loan. The designation, in writing, on the face of the certificates to be issued for the supplemental stock, is made for no other purpose than that of enabling the holder, if he chooses, to preserve its identity and its connexion with the primary stock. The manuscript addition made on the face of the condition intended to be issued in lieu of the original stock, of the ten million loan now in circulation, is intended—1st, to guard the public against imposition, by preventing more supplemental stock from issuing, in any case, than is actually due; and, 2d, to give notice to sub-

sequent purchasers of the stock, that the stipulations contained in the contract between the Secretary of the Treasury and the original subscribers to the loan had been fulfilled or in other words, that everything relating to that contract, so far as respected the stock in existence, was deemed at the treasury to be settled and closed. There is nothing in this that can have a tendency 'to impair the rights or embarrass the remedies' of the public creditors under the ten million loan for further issues of supplemental stock.

"No exaction is made from them of any release whatever of their rights or claims in this respect. Their rights will still remain with themselves, and their remedies with Congress. The notification, on the face of the certificate, is nothing more than the simple statement and exhibition of a fact which does exist, and which ought to be known, as well to the subsequent purchasers of the stock as to those who now hold it—namely, that the supplemental stock, stated on the face of the certificate to have been issued, was deemed at the treasury to be a full and complete execution of the original contract on the part of the government, so far as regarded the amount of stock to be issued under that contract. This information is already in possession of the agent of the present holders of the stock, or a great portion of it. To keep it from subsequent holders, who might purchase too under the impression that still further benefits are to attach to the stock, might subject the treasury, and with great reason, to imputations which it has hitherto been free from, and which it never will, I trust, be justly liable to, I have deemed it to be my duty to be thus particular in explaining to you the causes for my making the certificates of stock in the forms you see them, and I hope this will be the last time I shall have occasion to trouble you on this very unpleasant business.

"With, &c.,

"NATHAN LUFBOROUGH,

Acting Comptroller.

"Hon. SECRETARY OF THE TREASURY."

The acting comptroller says, "to guard the public against imposition, by preventing more supplemental stock from issuing, in any case, than is actually due." This is the most preposterous pretence that could be penned, the books of the treasury govern the issue, and the papers themselves carry the evidence; no additional protection was necessary, had there been any, a thousand other checks could have been adopted, without infringing the rights of those who had lent their money.

Mr. Dallas adopted this plan of the acting comptroller, and directed it to be carried into effect; yet nothing was done for a week.

In the hope that the opinion of so distin-

guished a lawyer as the Hon. Wm. Pinkney, of Baltimore, late Attorney General of the United States, if it corresponded with the view I had taken of the subject, would have an influence with the Secretary, I addressed to that gentleman a note in words and figures following:

"Mr. Barker will thank Mr. Pinkney to examine the Secretary of the Treasury's circular letters of the 2d of May and 31st of August, 1814, and inform him whether the persons who had stock in the ten million loan, on the day more favorable terms were allowed for a portion of the twenty-five million loan, are entitled to the additional stock for the difference between 80 and 88, or whether it belongs to such persons as may happen to hold the stock when government delivers the additional stock. On the payment of the money, government furnished ordinary six per cent. stock to the amount of one hundred dollars for each eighty-eight dollars paid. The said original stock did not contain any condition or other evidence of its being entitled to the benefit of the additional stock. The whole question rests on the condition contained in the Secretary's circular letter.

"NOVEMBER 23, 1814."

Mr. Pinkney replied:

"1. I suppose that the person who held stock in the ten million loan on the day when a part of the sum of \$25,000,000, authorized to be borrowed by the act of the 4th of March, 1814, was borrowed on terms more favorable to the lenders, was entitled, the moment such new borrowing was effected, to the benefit of those terms. His right to that benefit was perfected by the coincidence of the two facts, the borrowing by the government and the holding of the stock by him. The word 'then' in the letter of the 2d of May, 1814, can refer only to the epoch of the borrowing on terms more favorable to the lenders. It is impossible to make it refer to any other epoch without direct violence to the whole sentence.

"2. If the right to the benefit in question was completely vested in the holder of the stock in the ten million loan as soon as the borrowing on terms more favorable to the lender took place, I do not think that he is to be considered as having transferred it by a new subsequent assignment of the stock itself.

"The right to the benefit is collateral to the stock, and rests upon an enjoyment distinct from that which is the evidence or certificate of the stock. It is not made assignable by the certificate, as the stock itself is, for the certificate of stock takes no notice of it, and consequently does not even recognize it. An assignment of the stock, before the borrowing on the new terms, would doubtless have the effect of entitling the assignee to the benefit of

the new terms; but it would have that effect, for no other reason than that it would bring the assignee within the collateral contract, by making him holder of the stock at the time of the borrowing on the new terms. Such an assignment of the stock as would not make the assignee holder of the stock at that time; or, in other words, an assignment after that time, would not so bring the assignee within the collateral contract, and would not, therefore, give him the benefit of that contract, unless it can be shown that this benefit was by the certificate of stock made assignable as a constituent part of the stock, and under the name of the stock, which cannot be pretended.

"The engagement of the Secretary of the Treasury relates exclusively to the person who should happen to hold the stock when the new borrowing should take place; and the certificate leaves that engagement exactly as it found it. That person, whoever he might be, had, of course, upon the instant of the borrowing, a right to receive the difference between the price of the two loans, which would be so complete that nothing could make it better. This right, arising out of the first contract, existed in him from that time, *i. e.*, from the time of the new borrowing, independently of stock with which it never was incorporated, although the holding of the stock on the day of the new borrowing was made the condition of its existence, and no subsequent act, amounting to a transfer of the stock itself while the government delayed to comply with its engagement, could vary the right, already perfect, to have that engagement fulfilled, or could pass it to another.

"As far as analogy can be brought to influence this question, it is in favor of the claim of the holder of the stock when the new borrowing took place, and against that of a subsequent holder. Interest and dividends of stock already due are never understood, as, I believe, to pass by the sale of the stock which has produced them, and yet interest and dividends are the direct offspring of the stock and the sole objects of it. The reason is, that interest, or a dividend already due, has acquired an existence separate from the stock from which it sprung, is no longer dependent upon it, and has given birth to a new right to which the continuance of the title to the stock itself is not in any degree necessary. This reason is conclusive here, although if the rule had been otherwise, in the case of interest or a dividend, it would not have been conclusive the other way; because a rule is here given by an express engagement which one of the parties is not at liberty to modify by notions deduced from supposed analogies. I am not aware of any inconvenience (which could found the argument *ab inconvenienti*) likely to result from an admission of the claim of the holder of the stock at the era of the new borrowing, since the public books will show who was that holder; nor can I perceive that

the probable intent of the parties, or the propriety of the thing, favors the claim of a subsequent holder. On the contrary, I think that every consideration which belongs to the subject recommends the admission of the claim of him who held the stock at the time when the claim became complete under the terms of the contract to which it owes its being.

"WM. PINKNEY."

"NOVEMBER 25, 1814."

Upon receiving Mr. Pinkney's opinion, I presented it to Mr. Dallas.

He observed that he entertained a high respect for Mr. Pinkney's opinion, but as the case was decided, declined reading it.

New difficulties suggested themselves to the treasury officers, which, coming to my knowledge, on the 1st of December I presented a written paper, of which the following is a copy:

"There is not a single reason why the present stock in the ten million loan should be cancelled and new stock issued therefor, nor is there a single reason why a distinction should be made between the new stock (if new stock should be issued for the present stock) and the supplementary stock.

"Mr. Barker totally objects to having the stock certificates embarrassed with ambiguous sentences on their face. If a mark of distinction is necessary, a figure or a letter will answer every purpose. He thinks it is useless to cancel the present stock, and that the holders will not do it. When each loan officer receives the order to issue the additional stock, he has only to make out the certificates in the ordinary way (in the ten million loan) for the supplementary stock in favor of the persons who may then hold the stock, and not suffer any transfer to be made until he has delivered the additional stock to such persons, which will effectually prevent confusion, mistake, or fraud, and gives full effect to the Attorney General's opinion."

This remonstrance had no effect, as after a further delay of many days the instructions which had been prepared for the loan officers at the different places to carry out the views of the treasury were transmitted to the proper officers, as follows:

"CIRCULAR TO CERTAIN COMMISSIONERS OF LOANS.

"TREASURY DEPARTMENT,
"Comptroller's Office, Nov. 30, 1814.

SIR: I enclose, for your information and government, a copy of a notification, bearing date this day, issued by the Secretary of the Treasury, respecting additional stock to be issued to the subscribers, or those claiming under them, to the loan of ten millions of dollars of the 2d May, 1814.

"The additional stock in question is to be issued to the persons holding, at the time of

application for the additional stock, scrip certificates, or funded certificates of stock of the aforesaid loan of ten millions of dollars, and not to those who may have held the said certificates on the 31st of August last, the day on which a part of the loan for six millions of dollars was taken, unless they shall also hold them at the time of application for the additional stock.

"The loan of 2d May, 1814, having been effected at the rate of one hundred dollars in stock for eighty-eight dollars in money, and the loan of August, 1814, having been made at the rate of one hundred dollars in stock for eighty dollars in money, the amount of additional stock which the holders of the stock of May, 1814, are entitled to receive, is ten dollars on every hundred dollars of the stock they may now hold. The additional stock thus to be issued is, in conformity with the opinion of the Attorney General of the United States, to bear interest from the same day as the original stock, to which it is an appendage. This fact will be ascertained from the face of the original certificate, in all cases where no dividend and transfer on it have been made and declared; and in cases where a dividend and transfer have been made and declared, by having recourse to the books of the treasury, or to those of the Commissioner of Loans where the dividend was declared. You will be pleased to take care that no mistakes be made in regard to the commencement of interest on the supplemental stock. Where the dividends have been declared on books other than those of your office, you will, of course, obtain a certificate of the fact as to the time from which the stock originally bore interest, from the Commissioner of Loans on whose books the dividend may have been declared, or, if declared at the treasury, from the Register of the Treasury.

"Persons possessing a general and regular power of attorney to transfer stock in the ten million loan, and holding the stock, are to be considered as entitled to the additional stock; and where a power is produced authorizing a transfer to a particular person, that person is to be considered as entitled to the additional stock. In every case where the supplementary stock may be applied for, and before it can be delivered, the original certificate in the hands of the party, at the time of such application, is to be surrendered to you, and cancelled; and, in lieu of it, you will issue a new certificate for the same amount, entitled 'Funded six per cent. stock of 1814; loan of ten millions of dollars of the 2d May, 1814, on which the supplemental stock has issued,' together with a separate certificate, for the amount of the supplemental stock, entitled 'Supplemental funded six per cent. stock of 1814; loan of ten millions of dollars of 2d May, 1814.'

"On the original certificate, thus surrendered, there must be an assignment by the

proprietor, or his attorney, agreeably to the forms herewith, marked B. You will perceive that the accounts of the old stock are to be closed on your books, and new accounts opened, corresponding with the alteration in the funded certificates hereafter to be issued; a supply of which will be transmitted to you by the Register of the Treasury.

"You will make out duplicate abstracts of the certificates of supplemental stock issued by you, agreeably to the enclosed form, marked C; one of which abstracts you will forward to this office, quarter-yearly, and file the other in your office.

"The separation which is to be made of the original and supplemental stock is done for the accommodation of the holders, to enable them, if they choose, to establish hereafter the identity of the latter, and its connexion with the ten million loan.

"Although it is intended that different accounts of the ten million loan are to be opened, yet the whole amount on your books may be included in one dividend.

"For such scrip certificates of the loan of ten millions of dollars as may remain to be funded, you will, on application being made to fund them, issue a certificate of 'Funded six per cent. stock of 1814, loan of ten millions of dollars of 2d May, 1814, on which the supplemental stock has issued,' at the rate of between eighty and eighty-eight, or ten per cent. on the amount of the original certificate.

"It is proper to apprise you, that the Attorney General has given an opinion to the Secretary of the Treasury, setting forth, among other things, that the condition in the letter of the Secretary of the Treasury, of the 2d May, 1814, to the subscribers for the ten million loan, 'attached as soon as the second loan was made, (the loan of August, 1814;)' that, on the happening of that event, it (the contract) no longer remained opened and executory, subject to all the variations in price which might mark subsequent loans, until the whole twenty-five millions should be exhausted.' This opinion has been adopted at the treasury, and the supplemental stock, now authorized to be issued, is deemed to be in full of all demands upon the government for further issues of stocks in the ten million loan, under the contract above mentioned. It is not thought necessary, however, to take any release to this effect from the stockholders, on delivering them the supplemental stock.

"I am, very respectfully, &c.

"NATHAN LUFBOROUGH.

"To William Gardner, Benjamin Austin, Charles Ellery, Jonathan Ball, Wm. Few, Edward Hall, Thomas Nelson, Thomas Lehrs, Sherwood Haywood, William White.

"NOTE. The words '*scrip certificate* or' in the second paragraph, and the whole of the paragraph commencing with the words 'for

such scrip certificates,' were omitted in the letters to the Commissioners of Loans in Virginia and North Carolina.

By these instructions the reader will perceive that the holders of funded stock in the ten million loan are required not only to surrender their certificates, but also to assign the same to the United States, and accept in lieu thereof new certificates declaring on their face that the supplemental stock had been issued. These instructions contain also notice that the Attorney General had given it as his opinion that the contract no longer remained open and executory, subject to all the variations in price which might mark subsequent loans, until the whole twenty-five millions should be exhausted; that the Treasury had adopted that opinion, and that the supplemental stock then to be issued was deemed to be in full of all demands on the government for further issues of stock in the ten million loan under the contract of the 2d of May; carefully avoiding to state that no release would be required, and that the rights of the holders would remain with themselves, and their remedies with Congress, as had been determined by the President of the United States and Secretary of the Treasury, as set forth in the preceding letter. Why withhold that fact? Could there have been any other object than to destroy the beneficial effect of the condition on the market value of the particular stock to which it referred? This object he distinctly avows to have in view, as the reader will have seen in his letter to the Secretary of the Treasury dated the 24th of the same month.

Being thus discomforted by the exertion of power, I left Washington, first addressing through the columns of the National Intelligencer a letter to the parties interested, as follows:

"WASHINGTON, December 6, 1814.

"GENTLEMEN: The Treasury Department differs with me in opinion on several points in relation to your rights. The construction I put upon the contract, being supported by the opinion of many professional men of the first standing in the Union, induces me to believe the Treasury Department has sanctioned a mistaken view of the subject. And as it has published its opinion on an important point, I herewith send for publication the opinion of one of the most able professional men in America on that point, whose reasoning on the subject appears to me to be so applicable, clear, and conclusive, that it must

carry conviction to the mind of every unprejudiced man.

"With great respect, I have the honor to be, your assured friend,

"JACOB BARKER.

"TO THE PROPRIETORS OF THE STOCK IN THE TEN MILLION LOAN."

—
"NAVY DEPARTMENT, October 2, 1816.

"SIR: I request you to purchase immediately for the account of the Navy Department £25,000 sterling, say *twenty-five thousand pounds sterling*, in undoubted bills, amount of which shall be transmitted to you in a draft of the United States Treasury Department upon a bank in New York city.

"You will be pleased to furnish a statement of the bills, with the addition of your commission of one-quarter per cent., upon which the draft will issue, and the amount of bills will be passed to your credit against the warrant for like sum.

"In case you cannot procure the whole amount at six and a half advance, be pleased to advise of the deficiency, that it may be procured in Boston.

"I am, respectfully, sir,

"BENJAMIN HOMANS.

"By order of the Secretary of the Navy.

"JACOB BARKER, esq., *New York.*"

Notwithstanding all the differences of opinion between Mr. Barker and the treasury, he so far retained their confidence as for them to have sent him, unsolicited, about one hundred and seventy thousand dollars, to be invested in exchange at his discretion, as appears by their letters, as follows:

"NAVY DEPARTMENT, October 7, 1816.

"SIR: Your letter of the 5th instant, with its enclosures, has been received.

"A warrant has this day been issued in your favor for \$118,629 14, the probable cost of £25,000 sterling.

"You will furnish this department with a statement of the bills purchased by you for account thereof, regularly signed, which will be placed to your credit by the accountant of the navy.

"N. B. It is necessary that the endorsers should be responsible persons.

"I am very, respectfully, your obedient servant,

"BENJAMIN HOMANS.

"By order of the Secretary of the Navy.

"JACOB BARKER, esq., *New York.*"

—
"TREASURY OF THE UNITED STATES,

"Washington, October 8, 1816.

"SIR: Enclosed you will find my draft (No. 6,876) on G. B. Vroom, cashier, for \$118,629 14, the amount of warrant No. 6,073, issued by the

Secretary of the Navy, on receipt whereof be pleased to favor me with an early acknowledgment, specifying the sum received.

"With due consideration, I am, sir, your obedient servant,

"TH. T. TUCKER,

"*Treasurer of the United States.*

"JACOB BARKER, esq., *New York.*"

The question of establishing a national bank continued before Congress. In a conversation with the committee to whom it had been referred, I solicited them to name the commissioners for New York in the bill from among the petitioners, naming David M. Clarkson, John Wells, and Isaac Lawrence, as the most suitable.

A national bank is understood to be a mercantile establishment, so immediately and intimately connected with commerce that I believed mercantile men were particularly fitted to superintend the organization of such an institution. It was one of the few opportunities which Congress had of giving a place of distinction to a merchant, which I had believed would induce them to do so in part without hesitation; at all events, I thought that so much of the business as was to be done in New York would be entrusted to distinguished persons who had been long residents there.

The persons recommended by me for this honorable employ are too well known to require remark; and as to those who were selected by Mr. Dallas in preference, they were not merchants, neither of them had ever been a merchant. One is an inhabitant of Suffolk county, one of Dutchess county, and one of Connecticut, all temporarily in New York.

Mr. King, chairman of the senatorial committee to whom the petition had been referred, reported, on the petition of Daniel M. Clarkson and others, citizens of New York, praying the establishment of a national bank, a bill to incorporate the subscribers to the Bank of the United States of America, which was read and passed to a second reading. Notwithstanding the Philadelphia feeling against New York triumphed, and a bill passed both houses of Congress establishing a national bank at Philadelphia, which was defeated at that session of Congress by the news of peace, as the reader will soon learn.

On reaching New York, I made immediate application to the Commissioners of Loans for

the supplemental stock ordered so far as the original stock was held for my account; the system adopted by the treasury occasioned so much labor, that little was done before the books closed. From Boston I received a letter, dated 19th December, 1814, from my agent, which stated that the Treasury Department had not yet furnished the Commissioner of Loans at that place with the blanks, nor pointed out to him the mode of proceeding; therefore, I shall have to wait until after new year for the principal part of my supplementary stock, and another quarter before I can receive the interest due on a large amount thereof; a further difficulty was experienced by its having been made necessary to procure the return of all the stock sent to Europe, with powers of attorney from the holders of stock in Europe, before the supplemental stock could be obtained thereon. That which I sent could not be sold in England, as will be seen by the following:

[Extract.]

"LONDON, December 23, 1814.

"We cannot express to you the pain and trouble of mind your sending to us stock of the new loan (raised by your government for the sole purpose of carrying on a war against this country) has occasioned us.

"We shall return you the stock as it came, not *daring* to entrust it to *any notary* for the regular documents, as it would disclose the affair; this letter may enable you to obtain the transfer.

"Your obedient servant,

"J. J. EVANS & CO.,

"THOMAS MULLET."

Secretary Campbell, in his report to Congress, on the 23d September, 1814, says:

"Moneys have been heretofore obtained by the United States, on loan, in Europe, upon favorable terms, and the punctuality and fidelity with which they were repaid has established its credit there on a firm and respectable footing; it was determined, in consequence of the difficulties experienced in obtaining at home the sums required for the public service, to try the market in that quarter; to effect this purpose, the requisite powers and instructions have been given for negotiating a loan for six millions of dollars, as a further part of the loan of twenty-five millions authorized by the act of 24th March last; and in order to facilitate this object, six per cent. stock to that amount has been constituted and transmitted with directions for its sale, if that shall be found the most advantageous for obtaining the money."

No money was obtained in Europe, the effort

to sell the stock there shared the fate which attended my efforts in that direction.

Secretary Dallas, in his report to Congress, says, that three millions had been borrowed under the law of November 15th, 1814.

I have not been able to ascertain the facts attending this loan, probably obtained on similar terms as those allowed on the 31st of August; and it is believed that Mr. Dallas sold some stock in the ten million loan at 80, receiving therefor the depreciated paper of the banks of Washington. These terms being the same as those allowed on the 31st August, enabled the Secretary to say, on the 18th February, 1820, in reply to an enquiry by the Senate in relation to Mr. Barker's petition, "that no money was raised by loan under the act authorizing a loan of twenty-five millions of dollars, subsequent to the 31st of August, 1814, upon terms more favorable to the lenders than the loan of 2d May, 1814;" in place of which he should have stated the terms upon which all the loans had been made; had he done so, the treasury would have been deprived of the pretence that it did not know of the depreciation when it made the contract on the 31st of August. This pretence, not applying to transactions after Mr. Dallas came into power, which was more than six weeks after the failure of the banks, even if the fact had been as thus assumed, it could not avail anything; as a protection intended to have been given by the condition was, that the contractors for the ten million loan should, at all times, be enabled to go into the market on equal terms with the contractors for any other part of the twenty-five million loan.

Whether the depreciated paper was originally contracted for, or subsequently accepted by the treasury, it had the same effect on the market price of stock.

That the holders of the stock in the ten million loan are not on a par with those who made subsequent contracts is manifest; the latter could sell stock at 60 in Boston, purchase broken bank notes at a discount of 20 per cent., obtain from the treasury stock therefor at 80, and make a profit by the operation of 10 per cent., while the contractors for the ten million loan, if they settled at 80, would lose 10 per cent.

When I contracted, I did not take ad-

vantage of the distresses of the nation and squeeze hard terms out of the government. I did not, as I might fairly have done, say, "you must now allow me seventy-five or eighty; you shall not have my money without you do so; none others have offered it, and your distresses are such as will compel you to agree thereto;" in place of which I accepted of the Secretary's own proposition, 88, with the condition, although that was above the market price, knowing that if the anticipated peace took place, the condition would be valueless.

I had not the power, and therefore did not make offers for the six million loan. I had lent all the money I could raise, as it were, without price, saying, "go all over the world and borrow money for the residue of your wants on the best terms in your power, and I will be satisfied with your allowing me the same terms you allow to others." This was agreed to, the experiment made, and now, after I have run all the risks, the benefits thereof are withheld.

When the second contract was made, Washington had been the previous week destroyed; the cabinet dispersed; Baltimore besieged; New York and Philadelphia, and many other places expecting an attack; an immense force invading Plattsburg; our whole coast blockaded; our merchants in the most awful distress; the treasury nearly empty, and scarcely able to feed and clothe the men called in from the country to defend the aforementioned cities; the recollection of these things should at least have protected Mr. Campbell from censure. A fair opportunity was given to every individual in the nation to have lent the money on terms more favorable to government, if they had thought proper to have done so.

When it is considered that within less than one year I paid into the treasury more than five millions of dollars, in specie or its equivalent, I hope that the magnitude of the amount, and the difficulty of raising money during that year, will, in the estimation of the public, entitle me to the credit of having not only made every exertion in my power to promote the general welfare, but of having performed as much as was possible for any individual to have done under similar circumstances; and I hope that those who are interested with me in the question will be satisfied that I understood, and did not shrink from vin-

dicating their rights. I am of the opinion that Mr. Dallas will do me the justice to say that I pressed the claims of the parties with zeal. The difficulties he has had in his endeavors to borrow the trifling sums wanted, to pay a single quarter's interest, will give him a little idea of the difficulties I had to overcome in procuring so large an amount.

Since writing the preceding, I received advice from Philadelphia, that the Secretary of the Treasury had not been enabled to borrow, at that place, the trifling sum necessary to pay the quarter's interest due on stocks on the books of Pennsylvania the first of the present month, and therefore, that he could not pay it, except in Baltimore paper money, which I desired my agents to receive, as I wished to invest the amount in specie to enable me to place my stock in the bank which Congress are about establishing. They accordingly received pay in a draft on Baltimore, of which the following is a copy :

"BANK OF PENNSYLVANIA, Jan. 5, 1815.

["No. 14.]

"*Cashier of the Mechanics' Bank, Baltimore,*

"Pay to the order of Jacob Barker, esq., fifteen hundred seventy-six 3-100 dollars, to be paid in the notes of said bank.

"\$1576 3-100." "JON. SMITH, *Cashier.*"

This draft I put into the hands of my broker for sale, with orders to invest the amount in specie. After he had made the necessary enquiry, he informed me that he could not sell it for less than seven per cent. discount, payable in New York bank paper; and that for such paper he could not purchase specie for less than twenty per cent. premium; in consequence of which, and understanding that I could do better at Philadelphia, I took back the draft and returned it to that place, with orders to convert it into specie; which was done on such terms, as for the fifteen hundred and seventy-six 3-100 dollars, due in specie from government, I have received only twelve hundred and sixty 33-100 dollars, which is a conclusive exemplification of the difference between the depreciated paper which government received for their contract of the 31st August, 1814, and the money which they received for the ten million loan.

Mr. Barker, being unable to procure from the treasury a settlement of the several questions

which had arisen under his contract of the 2d May, 1814, petitioned Congress, which petition was referred by the Senate to Wm. H. Crawford, the then Secretary of the Treasury, to which he responded on the 18th of February, 1820, saying, among other things :

"Without determining that the construction given by the Attorney General to the terms of the loan of the 2d May, 1814, was correct, it was an act of justice to the community to make it known as soon as it was formed. So long as the expectation should be entertained, that a loan might be negotiated more unfavorable to the government than those which had been previously obtained, the price of the stock to which the contingency was attached would be affected by the possibility of its occurring."

Here is a distinct admission that the treasury was aware of the effect of its measures on the market price of stock, and of their designing to destroy the value of the condition allowed for the ten million loan.

The reader will observe how carefully Mr. Crawford avoided ratifying the previous action of the treasury.

The committee to whom it was referred, not having been furnished by the treasury with all the facts of the case which appeared on the records of the department, came to the conclusion that the ten per cent. supplementary stock had been accepted in full satisfaction of all claims which had arisen from the condition.

The delay in the settlement, with other disappointments in the financial and commercial affairs of Mr. Barker, imposed on him the necessity of making an assignment, following up the claim by another petition to Congress, furnishing evidence from the treasury books, that receiving the ten per cent. supplemental stock was not to be considered a full settlement of the question; on the contrary, that it was agreed that the rights of a further issue should remain with the holders of funded stock, and their remedies with Congress; which petition was also referred to a committee, who, in their report say, in effect, that the petition disclosed the fact of the assignment, therefore Mr. Barker had no right to petition. A strange conclusion this; had the prayer been granted, provision could have been made for the payment to, or the consent of, the assignees; beyond this, the assignment did not change the relation of the parties to each other.

A petition was presented, by the assignees, to

a subsequent Congress, giving a succinct history of the affair, in which they remarked, among other things, that—

"The former committee do not appear to have noticed in their report, that the paper received by the treasury, in fulfilment of the second contract for the ten million loan, was dishonored and depreciated, not only below the specie standard, but greatly below the value of New York bank notes, on which rests principally the claim of your memorialists.

"Whether Mr. Barker, by his insolvency, lost the right of petitioning your honorable body, a right secured to all by the constitution, cannot, in the opinion of your memorialists, affect the intrinsic merits of the question, since his creditors cannot be considered also to have been disfranchised by the "fact disclosed;" which fact is of public record, and could not have happened without a previous notice of many weeks in the newspapers at this place and at Albany, according to the law; and if it was otherwise, it is believed that when your honorable body reflect, that if the stock which became due to Mr. Barker on the 31st of August, 1814, had been issued to him, his insolvency could not have happened; and that as soon as your honorable body cause it to be issued, it will relieve him therefrom, you will not consider his having assigned his effects for the benefit of his creditors, and that his person might, under the benign influence of our laws, be exempt from imprisonment, as furnishing a valid objection to a claim otherwise founded in the immutable principles of justice, as defined by the unvarying laws of this land.

"In justification of Mr. Barker's having petitioned, it may not be deemed amiss to state that at the time he petitioned he held the power of attorney of the assignee under the law to collect and hand over all monies due him at the date of his surrender under the aforesaid law of this State; and that he held then, and still holds, a very great equitable interest in the said claim; the same, by the aforesaid construction, amounting to more than ten times as much as all the existing claims against him.

"Upon the whole, your memorialists, respectfully requesting that your honorable body will take into consideration all the facts and circumstances relating to the case in question, and that they will either authorize the Attorney General to agree to a statement of facts, to be submitted to the Supreme Court of the United States, to be decided by the same principles of law and equity as if they had occurred between individuals, or that they will grant such other relief as may be equally calculated to sustain the character and dignity of the nation. And they humbly pray your honorable body to bear in mind the declaration under which that part of the supplemental stock due which has been

issued was delivered to the holders of stock in the ten million loan, which was, as set forth in the Comptroller's letter of the 22d of November, 1814, that 'their rights (for the residue) will still remain with themselves, and their remedies with Congress.'

"And your memorialists, as in duty bound, will ever pray.

"RICHARD R. WARD,
"FITZ G. HALLECK,
"JACOB LITTLE."

This petition was referred to the Judiciary Committee of the House of Representatives, on which no satisfactory action was had until 1834, when Mr. Barker asked and obtained permission to appear before it. He did so, accompanied by the Hon. Abijah Mann, a member of Congress from New York. His explanations induced the committee to call on the treasury for information. The Secretary of the Treasury and Comptroller responded as follows:

"TREASURY DEPARTMENT,
"Comptroller's Office, Jan. 6, 1835.

"SIR: I have the honor to state, in answer to the inquiries contained in the Hon. Mr. Foster's letter to you of the 30th ultimo, and referred by you to me, that there does not appear in this office any other information on the subject of Mr. Barker's claim than what is embraced in the pamphlet accompanying the letter. There are no documents on file which go to show that 'the government knew that the District and Baltimore bills, which it agreed to receive at par, were depreciated at the time of the loan negotiated by D. A. Smith on 30th of August, 1814.'

"I herewith return to you the letter and pamphlet.

"I have the honor to be, very respectfully, your obedient servant,

"JOS. ANDERSON,
"Comptroller.

"The Hon. LEVI WOODBURY,
"Secretary of the Treasury."

—
"TREASURY DEPARTMENT,
"January 27, 1835.

"SIR: In reply to your communication enclosing 'the statement of Jacob Barker relative to the ten million loan of May 2, 1814,' I have the honor to inform you that there is nothing on file in this department which will throw any additional light on the claim of Mr. Barker.

"There is nothing in the records on files of this office to show that at the time this loan was negotiated by D. A. Smith the District and Baltimore bills, which the government agreed

to receive, were depreciated here. I transmit herewith a report from the Comptroller, which states there are no documents in his office to show that the government were aware of any such depreciation.

"I am, very respectfully, your obedient servant,

"LEVI WOODBURY,
"Secretary of the Treasury.

"Hon. THOS. F. FOSTER,
"Chairman Com. on the Judiciary,
"House of Representatives."

These letters admit the receipt of the depreciated paper and the accuracy of Mr. Barker's statement, placing the defence of the treasury on the supposition that it did not know of the depreciation when they contracted on the 31st August. Whether they knew or not, as before stated, was not material; it was the receipt of the depreciated paper at par and giving stock for it at eighty which constituted the claim. If it was not known when the contract was made, it was known before the instalment days came round, the last of which was the 10th of December, when Mr. Dallas had been near two months in office. A great proportion of this depreciated paper was received by him; consequently immaterial.

However, that the treasury did know of the depreciation, when it contracted on the 31st August, is as manifest as noonday light.

The Secretary of the Treasury writes, on the 17th October, 1814, in answer to a letter of inquiry from John W. Eppes, chairman of the Committee of Ways and Means:

"The benefits even of this paper currency is in a great measure lost, as the suspension of payments in specie at most of the banks has suddenly broken the means of accommodation that previously extended the credit and the circulation of the notes which were emitted in one State into every State of the Union.

"It may, in general, be affirmed, therefore, that there exists at this time no adequate circulating medium common to the citizens of the United States.

"The movied transactions of private life are at a stand, and the fiscal operations of the government labor with extreme inconvenience."
—(See Book of Finance, vol. 2, page 366.)

Mr. Barker set about procuring information to satisfy the committee on that point; he being under the necessity of leaving Washington for New Orleans before the proofs were received, Mathew St. Clair Clarke, esq., clerk of the House of Representatives, undertook to perform this

service. The sickness and absence of witnesses, with a press of other business, prevented its being done in season for the committee to report before the adjournment of Congress. Mr. Barker has been informed that they were unanimously of the opinion that he had made out a very strong case, on which subject the deposition of D. A. Smith, esq., and sundry letters, were received, which are as follows:

"UNITED STATES OF AMERICA, } to wit:
"State of Maryland,

"I, John Gill, notary public by letters patent under the great seal of the State of Maryland, commissioned and duly qualified, residing in the City of Baltimore, in the State aforesaid, do hereby certify, attest and make known, that on the day of the date hereof before me personally appeared Dennis A. Smith, of Baltimore county, in the State of Maryland, and made oath on the Holy Evangelical of Almighty God, that he resides in Baltimore county, in the State aforesaid; that on or about the 30th August, 1814, he contracted with the Secretary of the Treasury to loan to the United States the sum of one million eight hundred thousand dollars, being part of the 25 million of dollars authorized to be borrowed by the act of Congress of the 24th March, 1814, for which sum, to be loaned by deponent to the United States, he was to receive six per cent. stock to the amount of \$100 for each \$80 paid; and it was further understood and agreed between the Secretary of the Treasury and him (deponent,) that he (deponent) should pay for the same in paper of the Banks of the District of Columbia, and of the Banks of the City of Baltimore, which banks their own paper at par; and it was further agreed that, on producing the proper evidence of the payment of the said sum of one million eight hundred thousand dollars to the Commissioner of Loans of the United States, funded stock to the amount of \$100, bearing interest of six per cent. per annum, should issue for each \$80 of the paper of the said banks, the one million eight hundred thousand dollars aforesaid, and did receive therefor funded stock to the amount of two millions two hundred and fifty thousand dollars; that the said banks in whose paper this deponent paid the said one million eight hundred thousand dollars did not, at the time deponent so paid, redeem their notes with specie; that the bank notes paid by deponent to the Secretary of the Treasury were, at least, twenty per cent. below the par value of silver and gold, and that fact was well known to the Secretary of the Treasury, and was a matter of notoriety, of which an act having been of me requested, I have granted these presents to serve and avail as need and occasion may require.

"In testimony whereof, the said appearer has hereunto subscribed his name, and I, the said

notary, have hereunto set my hand and affixed my notarial seal the 11th day of March, 1835.

"D. A. SMITH.

"JNO. GILL, [L. s.]
"Notary Public."

—
"JANUARY 26, 1835.

"MY DEAR SIR: I have intended to do myself the honor of calling at your house for three or four days, in respect to the subject of your note of the 19th current, but a multiplicity of engagements have prevented.

"I am informed that the Judiciary Committee have decided substantially in favor of Mr. Barker's claim, but they wish to have proof that the government not only contracted for a subsequent loan on better terms, but that they knew beforehand that the paper they were to take was below par when they contracted.

"This I presume can be furnished.

"It is proper for me to reserve my own opinion upon the merits of the matter.

"Yours, respectfully,
"A. MANN, jr.

—
"WASHINGTON, February 10, 1835.

"DEAR SIR: The very papers which I urged you to leave with me have become the turning point with the committee.

"The Deposition of Dennis A. Smith going to establish the fact that the paper received from him in payment of his loan was below par, and the banks not paying specie.

"Prime, Ward and Sands' certificate, &c., &c. Mr. Foster has called on me for proof that when the Secretary took up the loan from Smith, he knew that the paper agreed to be received was below par.

"To this I answered, that to convict him of the actual knowledge was impossible; but if I proved the fact to be so notorious that it was his duty to know what everybody else knew, would that not be considered sufficient. He intimated that it would.

"On the 18th page of your pamphlet you find the affidavit of D. A. Smith, and the certificate of P., W. and Sands. You must get P., W. and Sands to make oath instead of a certificate, and also to state the fact was notorious to all commercial men, especially those who dealt in stock and money, and send it on to me forthwith.

"I have sent to Smith a copy of his deposition, and desired him to repeat it with the addition, if possible, of the difference between these notes and specie, and the notoriety of that difference.

"I shall also get a deposition or two here, if I can; might you not add one or two others in New York.

"I should not wonder if we get a bill reported ordering the difference to be paid at once.

"Hoping to hear from you, I am your obedient servant,

"M. ST. CLAIR CLARKE.

"JACOB BARKER, esq."

—
"NEW YORK, February 13, 1835.

"DEAR SIR: Your letter of the 10th instant came to hand yesterday, in reply to which I have to inform you that Mr. Jacob Barker is absent at New Orleans, where he will probably remain until July next.

"I applied to Messrs. Prime, Ward and Sands, and am sorry to say that Ward, the only partner from whom I could get the necessary certificate, is very ill—so much so that he cannot be seen; I cannot, therefore, get the paper required until he recovers, which will probably take some time.

"Mr. Prime has retired from business, in the country, and Mr. Sands is dead.

"I have made exertion to get some other certificates, and I regret that I have not succeeded, in consequence of the persons being at the south to whom I applied.

"I shall, however, make further exertions to procure certificates, and, if I succeed, will forward them immediately.

"Respectfully, your obedient servant,

"WM. H. BARKER.

"MATTHEW ST. CLAIR CLARKE, esq."

On this subject, Governor Kent, member of the United States Senate from Maryland, remarked, in a speech before that body on the 23d of April, 1834:

"Notwithstanding the existence of the circumstances thus propitious, our public agents could not be influenced by that good old adage 'Let well enough alone;' but they must try an experiment upon the currency, a vital part of the social system, if that could be called an experiment which had before been tried and totally failed. Sir, this scheme was fully tested from 1811 to 1816. I was here an actor in the scenes of those days, and well remember the ruinous consequences that resulted from them. The experiment made then soon terminated in a paper currency of a description so bad that I shall not undertake to describe it. It continued to depreciate until it became so worthless that the members of Congress refused to receive it in payment for their per diem allowance. They were paid in treasury notes and drafts on northern banks where specie payments had never been discontinued, and those were sold for a premium which was pocketed by the members, whilst their constituents were obliged to receive the depreciated paper money in payment for their hard earnings. What the people individually lost, and what the government lost during the five years that this first experiment was going on, and which embraced the whole period of the late

war, I will not attempt to estimate. We know that there is enough of the trash of that day now remaining in the public treasury, called unavailable funds; which, with the interest added to it, would be sufficient to complete the Chesapeake and Ohio canal, the Baltimore and Ohio railroad, and the Delaware breakwater, three great and magnificent public works intimately connected with the future prosperity of the country.

"Sir, it is known to most of those whom I have the honor to address, that the government was obliged, during the greater part of the late war, in making their loans, to give one hundred dollars in stock of the United States, bearing six per cent. interest, for eighty dollars of this depreciated paper money, worth about sixty-five dollars. On one occasion, the government was reduced so low that the Secretary of the Treasury was compelled to entreat an individual to obtain a loan of eighteen hundred thousand dollars, at one hundred of stock for eighty of this depreciated money, and which was to have a retrospective effect upon a previous loan; in consequence of which it cost the people of the United States twenty-nine hundred thousand dollars, independent of interest, before it was paid off. The same individual was intreated, at the same time, to procure an additional loan of this depreciated paper money at eight per cent. It has been well believed that the most, if not all, of those losses could have been avoided, if there had been, at that time, a sound currency, such as a national bank would have given us. I know this was the opinion of one of the purest and wisest men that ever participated in the councils of this country."

That the Secretary was apprised of the depreciation when he made the contract is too manifest to admit of a doubt; it might as well be supposed that he did not know that the Capitol had been burned, as, in the face of all these facts, to suppose that he did not know of the depreciation.

Mr. Barker insists that the depreciation was known at the treasury on the 31st August, 1814, as deducible from the following facts:

1st. The banks of Baltimore and of Washington had suspended payment, and sent off all their specie before the British entered Washington, which was on the 24th of August.

2d. That they did not resume specie payments until after the United States Bank was established in 1817.

3d. The Bank of Columbia established an office in the Treasury Department on the return of the cabinet to Washington, where all the business of the government was conducted by

Richard Smith, esq., with depreciated paper, and no other payments could be obtained by those having claims on the treasury. The daily applicants were numerous, and their complaints to the Secretary loud and incessant, at being obliged to receive paper which had no circulation beyond the localities of the banks issuing it.

The Secretary, in his report to Congress of the 23d September, 1814, says:

4th. "The difficulties already experienced in obtaining loans, and the terms on which it has been found necessary to accept them, sufficiently show the propriety of Congress adopting effective measures for procuring the sums still required for the service of the residue of the present as well as for that of the ensuing year.

"The suspension of payments in specie by many of the most considerable banks in the United States, and of those most important in the money operations of the treasury, has produced, and will continue to cause, difficulties and embarrassments in those operations. The circulating medium of the country, which has consisted principally of bank notes, is placed upon a new and uncertain footing, and those difficulties and embarrassments will extend in a greater or less degree into the pecuniary operations of the citizens in general. The powers of Congress, so far as they extend, will be required to be exerted in providing a remedy for these evils, and in placing, if practicable, the currency of the country on a more uniform, certain, and stable footing."

5th. Congress, by the recommendation of Mr. Dallas, passed a law on the 15th of November authorizing these suspended banks to loan to the government three millions of this paper, and the Secretary advertised on the same day, offering to take approved bank paper for such loan.

6th. The Secretary says, in his report to Congress on the 2d of December, (see Book of Finance, vol. 2, page 878,) that, being unable to use the depreciated bank paper on hand in the payment of dividends, it had been transferred to the army and navy.

He also states that specie had been offered below seventy-five, and therefore rejected. He further says (see same book, page 841 to 845,) that, unable to procure as much money as would pay the interest and the treasury notes maturing at Boston and other northern cities, these creditors must wait.

Mr. Dallas in his report says \$6,122,457 32 had been borrowed in local currency, and

\$3,161,587 06 in treasury notes.—(See Reports on Finance, 2d vol., page 57.)

7th. When peace took place stock and treasury notes improved in price, while the depreciated paper of the District of Columbia underwent no amelioration, yet the Secretary continued to refuse to borrow specie, to which the soldiers who had fought and won our battles and others were entitled; continuing to exchange government securities for this depreciated paper, and paying it out at par, to the profit of the treasury of \$32,107 64, as reported by him to Congress December 15, 1816, saying to those hungry applicants "that he was sorry that he had not anything better in which to pay them; that they were under no obligation to take it; that if they did not like it, they had only to wait till the treasury had something better to offer."

The Secretary says in his report that the object of a law authorizing a loan of \$12,000,000 was to aid the treasury with a supply of the local currencies of different places.

8th. The testimony of Dennis A. Smith and Governor Kent.

Mr. Barker visited Washington several times after this, but could not get a hearing before the committee until June, 1854, when he appeared before it and went as fully into the subject as the time allowed would permit. A member being under the necessity of attending to business before the House, suggested to Mr. Barker to reduce to writing what further he had to say. He did so in the committee room, while waiting for the member to return, that being necessary to form a quorum. It was as follows:

"The intention of the condition was to protect the holders of the stock against a depreciation by a future issue of stock at a less price, which was certain to occur in case the war continued, the necessities of the government requiring the whole 25 millions, Congress having adjourned without making any other provision except the issuing of treasury notes.

"The manifest meaning of the law and of the condition was, that the government should continue to borrow under that law until the whole amount should be obtained; hence, putting it on the shelf and borrowing under a new law was a palpable violation of faith.

"Cutting off the holders of full stock in the ten million loan from all further benefit from the condition, on granting more favorable terms for a small portion of the loan, while one

half of the 25 millions remained uncontracted for, was an invasion of the vested rights of those who had lent their money in good faith, relying on the promise that, 'if more favorable terms should be allowed for any portion of the 25 million loan, the holders of the full stock in the ten million loan should have the benefit thereof.'

"The holders of this stock were deprived of the benefit of the condition by the unlawful action of the treasury as effectually as if they had yielded to the first imposition attempted, and subscribed the release attempted to be extorted from them by withholding the supplemental stock to which they had become entitled.

"These holders depended on the market price, having to sell their stock daily to get money to meet their own engagements; they were dealers, not mere money lenders; had it been otherwise, the injustice would have been the same, although the injurious consequences would have been less severe.

"Refusing the supplemental stock when it became due, and then giving it to those who had not any title, because the unlawful withholding had obliged the holders to part with their certificates, was an invasion of rights vested in the holders of full stock in the ten million loan; these certificates did not make any reference to the condition; they were separated from the contract which conferred the right of the supplemental stock in terms on the holders of the stock, when the more favorable terms should be allowed.

"It was not negotiable except by special assignment. The practice of the government and the States is to issue bonds with coupons attached for the interest. If payment of the interest should be refused, and the parties by the defalcation be compelled to detach his matured coupons from the bonds and sell them, their payment could not be refused to the new holders because he did not also hold the bonds.

"It is the universal practice of the treasury of the United States and of each State, to pay the matured coupons when presented, without requiring the certificates of stock or inquiring who holds them, although these bonds promised the interest on their face.

"For all the full stock in the ten million loan the government received specie or its equivalent; hence, when they refused specie and took depreciated paper for other portions of the 25 million loan, the holders of full stock in the ten million loan became entitled to the benefit of the difference, otherwise the intention of the condition would be defeated; for instance, a man with \$80 specie could purchase \$100 of this depreciated paper, and for it receive \$125 in stock, and thus drive the holders of the ten million stock out of the market, or compel them to sell it at a loss of 15 per cent., while the holders of the stocks obtained for the depreciated paper sold their stock at cost.

"The question has become much simplified by the government having taken up all the stock, and there being no other claimants than the holders when the more favorable terms were allowed, the treasury books establish who they were.

"The government will not claim this benefit by virtue of this possession, because a debtor paying only a part of his debt is not released, without an express article of release or compromise.

"Those who purchased after the notification from the treasury that the condition had been finally settled, and that nothing more would be allowed, paid nothing for the condition and cannot interpose a claim adversely to those who paid for it, and they never have claimed or pretended any claim.

"Suppose there had been several contracts, each more favorable than the preceding one, would not the benefits have been divided among the holders at each period, according to each difference; if not, no settlement could have been made until the whole 25 millions had been borrowed. Consequently, as this has not occurred and never will occur, the government would never be bound on that construction to have issued a dollar of supplemental stock.

"Making the continued holding necessary would have impaired the chances of sale by the holders to a ruinous extent. The stock certificates did not mention the condition which was spread on the scrip certificates.

"This omission was for the avowed reason, that it did not follow the stock beyond the period when more favorable terms should be allowed, while the certificates were intended to be permanent.

"Whether or not the holders would have been entitled to the benefit of further more favorable terms, had they been allowed by a third contract, may not be material to enquire, since they are willing to relinquish all other claims on being allowed the difference between the market value of specie and the depreciated paper received for the loan of the 31st August, 1814."

No quorum of the committee could be had after this, and the subject was therefore laid over until the next session of Congress; in the interim, Mr. Barker received the following letter:

"NEWPORT, R. I., September 28, 1854.

"MY DEAR SIR: Observing that the subject of your loans to the United States during the war of 1812 with Great Britain have lately been before Congress, it may be useful to know the opinion of the late Hon. Elisha R. Potter, a member of Congress from this State for many years, which I will detail.

"Mr. Potter was one of the strongest oppo-

nents of the war, and generally considered the leader of the opposition in the House.

"While the war question was pending, or measures for prosecuting it were before Congress, a number of southern members came to Philadelphia to spend the Christmas holidays, and among them was the loved and lamented William Loundes, of South Carolina, then a member of Congress from that State, in whose company I chanced to dine, and I heard him say to the guests that Mr. Potter, of Rhode Island, was the strongest opponent they had to contend with, and but for him they could easily carry out their war measures.

"I resided in the immediate neighborhood of Mr. Potter, saw him frequently, and heard him converse about the war and other subjects. And after you had made some unsuccessful attempts to get a settlement with the government, he made to me the following statement:

"I remember very well, during the war, when Mr. Calhoun informed the House that there was a gentleman in the gallery who would furnish government with three million of dollars.

"I looked above to see who was there that was probably the person alluded to, but saw no one that appeared competent to the task except my old friend Thomas Hazard, and came to the conclusion that he was the gentleman Mr. Calhoun alluded to.

"We had been acquainted all our lives, and I knew it was next to impossible to divert him from his purpose, but I was determined to make the attempt. Being most decidedly opposed to the war, I would let no opportunity pass without an effort on my part to put an end to it, believing the interests of the country would be advanced by a speedy peace, which was likely to result from the want of means to carry on the contest.

"I therefore proceeded to that part of the gallery where Mr. Hazard was seated, and on his rising, with extended hand, to receive me, I said "'Is it *thee* that proposes to lend government three million of dollars to carry on this iniquitous war?'" He replied "'No, not me, but my son-in-law, Jacob Barker. I will introduce him to thee'"—and did so.

"I had observed," continued Mr. Potter, "when your uncle came in there was a young man with him, who I supposed was a nephew, or some young gentleman of his acquaintance, who had availed himself of the opportunity of visiting the capital with one so favorably known there, and on its being announced to me that this was the person who proposed furnishing government with so large an amount I was surprised, but congratulated myself with the hope that I should find but little difficulty in dissuading so youthful looking a person from engaging in what I then believed to be a very hazardous enterprise.

"Accordingly I seated myself beside him, and used all the arguments in my power to stop the negotiation, but without effect. I

found him as hard to move from his purpose as I had expected to find the elder gentleman, and after exhausting all my arguments upon him in vain I gave it up.

"Mr. Barker made the contract, and furnished government with a very large amount at a most critical and trying time, and, I believe, at that period was the only man in the Union that could and would have done it, and we were enabled, with the means he furnished us, to prosecute the war. Without it I could see no way but to make a peace on such terms as we could, which I then believed would be for the interests of the country, and I opposed that contract, in all its stages, with all my might, and did everything I could to prevent it.

"But it was a fair contract, and, as things turned, of great service to the country; and I would now, if in Congress, do all in my power to have it fulfilled; and I think Mr. Barker should petition for the allowance of his claims until obtained, or if not successful in his lifetime, direct his descendants to pursue the subject unceasingly until they succeed."

"In our conversations, years afterwards, Mr. Potter several times reverted to the subject, and spoke of the double obligation Congress was under to fulfil that contract, alluding to the fact of Mr. Barker's coming forward and risking everything he had to aid the government at the time of its greatest necessity.

"About the time you were negotiating this loan, I (as a school-boy) was passing through New York, and stopped at your house with my father, who was also much opposed to the war, and to your making the loan, and after urging many arguments against it, said: 'But, Jacob, the government itself may be so embarrassed with this ruinous and expensive war that it will not be able to pay, and fail, or break down before the war is ended.'

"You replied, 'If government fails, I am willing to fail with it, property and everything else are of little or no consequence compared to the success of my country—I am willing to risk everything I have for her.'

"Afterwards, when the prospects of our country assumed a more favorable aspect, and others were offering money to government, my father often remarked that 'when everything were the most gloomy aspect for the country, Jacob Barker was the only man willing to risk his all to sustain the administration, but now when there appeared little or no risk there were plenty of patriots willing to furnish, on better terms than were allowed to him, and Congress seemed to have forgotten the state of things that existed when he came forward, or they would be willing to fulfil the contract they had made with him.'

"Hoping your present application to Congress will result favorably, I remain, with great regard, yours truly,

"ISAAC PEASE HAZARD.

"JACOB BARKER, esq."

Congress re-assembled, when Mr. Barker appeared again before the Judiciary Committee, urging a decision; his closing remarks were:

"I am told that lobby influence is essential to the success of the claim, none has ever been exerted, the members of Congress have not been besieged at their hotels; I have not, in any case, sought the influence of the lobby, but have always relied on the intrinsic merits of my case. I am poor enough, God knows, yet, I do not come here to ask charity, nor do I ask pay for my patriotism, all I ask is justice."

The committee proceeded to the investigation of the documentary evidence adduced, and the consideration of the subject, which resulted in the following report:

"THIRTY-THIRD CONGRESS, SECOND SESSION.

"IN THE HOUSE OF REPS., FEB. 25, 1855.

"Mr. F. P. STANTON, from the Committee on the Judiciary, made the following

"REPORT.

"*The Committee on the Judiciary, to whom was referred the memorial of R. R. Ward, F. G. Halleck, and Jacob Little, assignees of the estate of Jacob Barker, having had the same under consideration, submit the following report:*

"By the act of the 24th March, 1814, Congress authorized the President to borrow twenty-five millions of dollars. The Treasury Department advertised for ten millions of this loan, to be taken on the 2d of May following. On that day a contract was duly executed with Mr. Jacob Barker and sundry other persons for a portion of these ten millions, upon the following terms and conditions, to wit: 'eighty-eight dollars in money for each hundred dollars in stock; and the United States engage, if any part of the sum of twenty-five millions of dollars authorized to be borrowed by the act of 24th March, 1814, is borrowed upon terms more favorable to the lenders, that the benefit of the same terms shall be extended to the persons who may then hold the stock, or any part of it, issued for the present loan of ten millions.'

"The necessity for resorting to this condition, in order to secure the negotiation of even a part of the loan, can be explained only by the extreme embarrassment of the treasury, and the uncertainty of its future resources, depending, as they did, upon the conclusion of the existing war. These extraordinary terms, however, were not unexampled, and did not originate with these contractors. A similar condition, differing only as to the persons entitled to the benefit of it, had been allowed to Messrs. Girard & Parish, upon the negotiation of the loan of March, 1813; and there can be no doubt that the terms stipulated in 1814 were suggested by those of the preceding year.

"It was known that the enemy was relying largely upon the embarrassments of our finances, and it was a matter of the first importance to obtain the necessary funds for carrying on the war at almost any sacrifice. The effect of success in obtaining this loan was expected to be favorable to the negotiation of peace. In that event, the government stock would have advanced so as to render the condition attached to the above loan of no consequence whatever. But, in the opposite contingency, which actually did happen, it was apparent that there would be a tendency to decline in the government stocks, which would bring ruin upon the contractors, without such a condition as that which was actually adopted. It is well known that, upon such occasions, contractors for government loans, to be paid in instalments, usually rely upon the sale or pledge of the stocks received for one instalment, in order to meet the next. It is apparent, therefore, that in the present case the contractors who took the loan above its market price must, without the condition, have suffered immense losses from the continued depression of the market, owing to the prolongation of the war. The terms of the contract were perfectly legitimate, and afforded only a fair security to the parties who, in that dark period of our history, patriotically stepped forward and risked their fortunes for the support of the government.

"In July following (1814) the government advertised for another sum of six millions, part of the twenty-five million loan, to be closed on the 22d August next thereafter. This loan entirely failed. The British forces entered the city of Washington on the 24th of that month. The banks of New York, and all south of that city, suspended specie payments. The banks of Baltimore and Washington sent off all their valuable effects upon the approach of the enemy, and the members of the government dispersed, and did not again reassemble in Washington until after the evacuation of the city by the British army, which took place on the night of the 26th. On the 30th the Secretary of the Treasury opened new negotiations for six of the twenty-five millions authorized to be borrowed as above stated. On the following day, the 31st August, 1814, a contract was made with the officers of the Baltimore and District banks, and sundry other persons, for something like two and a half millions of dollars, at eighty per cent., payable in the depreciated paper of the banks aforesaid.

"Upon the negotiation of this second part of the twenty-five million loan, the holders of the stock in the first part of the loan, claimed the performance of the condition incorporated in the original contract. Upon this demand various difficulties were started, of which the most important were these :

"*First.* The Secretary of the Treasury insisted that the parties entitled to the benefit of the condition were not the parties holding the

first stock at the time of the second loan, but the parties who held at the time of paying the difference due on account of the condition. It is apparent that this was a very material point, and the position of the Secretary was in direct conflict with the express terms of the contract. This point, however, becomes less important, as it is understood that the parties claiming the supplemental stock have settled this question among themselves. The committee, nevertheless, refer to the correspondence of the department, and especially to the opinion of Mr. Pinckney hereto appended, in which the full discussion of this question will be found.

"*Second.* The Secretary of the Treasury insisted, that upon the negotiation of the second loan under the law of 1814, and upon the issuance of the supplemental stock for the difference, in conformity with the terms of the contract, the condition was exhausted, and the government might thereafter negotiate portions of that loan upon any terms, without incurring any additional obligations to the holders of the original stock. Such was the decision of the Attorney General, and the Secretary of the Treasury acted upon it, for the express purpose—as stated in the letter of the acting Comptroller of the 24th November, 1814—of giving notice to the subsequent purchasers of the stock that the stipulations contained in the contract had been fulfilled; "or, in other words, that everything relating to that contract, so far as respected the stock in existence, was deemed at the treasury to be settled and closed." The effect of these proceedings must have been at once to reduce the value of the original stock in the market; for it is plain that the condition attached was an important element in the estimate of its value. Indeed, the published letters of the department avow the purpose of notifying subsequent purchasers to prevent their paying the additional value given to the stock by the continuance of the condition. The committee cannot concur in the decision of this point, and they believe that nothing but the great embarrassments of the treasury would ever have induced any public officer to place such a construction upon the original contract. It is well said by the memorialists, that if this construction be correct, the treasury might have equally exhausted the condition, and put an end to the rights of the parties, by negotiating any inconsiderable part of the loan at one-eighth of one per cent. below the original contract price, and then proceed to sell the whole balance at a greatly reduced rate. Such a construction would have placed it in the power of the department to effect the complete ruin of those who had generously aided the government in its extremity."

"It is true, however, that in adopting these harsh and unjust measures, to the injury of the holders of stock, the Comptroller of the Treasury, in his letter above quoted, says: 'No exaction is made from them of any release whatever of

their rights and claims in this respect. Their rights will still remain with themselves, and their remedies with Congress.' But the officers of the treasury do not seem to have had entire confidence in the legality of their proceedings and the soundness of their construction of the original contract; for, in a short time afterwards, before the twenty-five million loan had been half exhausted, the Secretary of the Treasury applied to Congress for power to make a new loan, which was granted by the act of 15th November, 1814. The 8th section of this act expressly authorized the banks in the District of Columbia to take any part of this new loan. They accordingly did subscribe for it, paying the amount in their own depreciated paper. The effect of this statagem, if not its very object, was to rid the government entirely of the condition attached to the loan authorized by the act of 24th March preceding. But while the government was thus relieved from a troublesome condition, the rights and interests of the former contractors were wholly sacrificed. Reasons of state, arising from the emergencies of the time, may have justified this evasion of a fair and valid contract; but it is doubtful whether the strict maintenance of good faith, on the part of the government, would not have tended more to sustain its credit in the market, and its strength in the confidence of the people. However this may be, there can be no question as to the propriety of doing complete justice at the present time.

"The memorialists do not claim any remuneration for the injury done to the value of their stock by notifying the parties that the condition was exhausted; or by the subsequent act of setting aside the loan of March and resorting to that of November. That these proceedings did result in great injury, must be admitted from the very nature of things, though it might be difficult to determine the extent of loss incurred. But leaving these particulars entirely out of the case, the memorialists place themselves upon the ground of a single well-established fact, upon which they claim what they believe to be an unquestionable legal right. This fact is, that the loans negotiated on the 31st of August, 1814, were taken at the rate of eighty dollars in the hundred, payable, and actually paid, in depreciated bank paper. In settling with the holders of the original stock upon the basis of this second loan, the Secretary paid only the difference between eighty and eighty-eight, estimating the depreciated bank paper, paid under the second contract, as equivalent to so much specie. The memorialists now claim the difference between the value of money and the currency in which the payments were stipulated and received.

"It does not appear, so far as the committee have been able to see, that the parties made the claim in this form at the time of these transactions. The only questions then dis-

cussed between the stockholders and the government were those already alluded to in this report: first, as to the parties entitled to receive the supplemental stock; and, secondly, as to the continuance of the condition after the second negotiation. But it will be readily seen that, under the circumstances then existing, with the certainty that other negotiations would be required for obtaining the balance of the twenty-five million loan, the question which is now so material was then of little importance; because, upon any subsequent negotiation, in which the terms might have been still more favorable to the lender, the original stockholders would have been entitled to a sum equal to the further depreciation of the stock, and it was not very material whether that advantage continued attached to the original stock or was added in the face of the supplemental stock. But the parties seem to have been at the mercy of the department, and were forced to receive whatever they could obtain. The power of the government was exerted with little regard to rights of the parties, and the occasion was altogether unfavorable to the assertion of the present demand, even if the first contractors then knew the terms of the second loan. But there is no evidence that they were apprized of the fact that depreciated paper was received, especially as the department even now asserts that there is nothing remaining on the books or records to show it.

"If the loan of the 31st of August was actually stipulated to be paid, or in fact was paid, in a depreciated currency, the committee do not see how the claim of the memorialists can be denied. In order to ascertain the facts, application was made at the Treasury Department for such information as could be furnished from that quarter. But they received nothing satisfactory in reply, as will be seen by the correspondence appended. In looking, however, at the history of the period, the testimony presented, and the admissions made from time to time in the various treasury reports, the committee cannot doubt that the facts are as averred by the memorialists, and that the 80 per cent. paid on the negotiation of the 31st of August was entirely illusive, being paid in the depreciated currency of the times. The deposition of Dennis A. Smith, one of the contractors, distinctly proves the fact. And it further appears, that during the period from the 20th of September to the 10th of December following, in which the monthly instalments were to be paid, the paper received varied from ten to twenty-four per cent. below par.

"But, while the committee are satisfied of these general facts, they deem it inappropriate for them to attempt to determine, absolutely, either the fact of depreciation in the funds received at the treasury, or the amount to which it would entitle the claimants. In their judgment, however, it would be eminently just and proper that the accounting officers of the treas-

ury should be authorized to hear testimony as to the fact and amount of depreciation, in order that the faith of the government may be redeemed, and the legal rights of the parties under their contract with the government secured, by paying the amount found to be due. Considering with what cheerful patriotism Mr. Jacob Barker gave his energies, his eminent financial talents, and his great pecuniary means, to sustain his country in the darkest and most perilous hour of the war of 1812, it can hardly be supposed that Congress will deny him the privilege of establishing, if he can, a clearly legal demand, arising out of a recorded contract, which, while it benefited the government, resulted in his own ruin. The committee, therefore, report a bill for the relief of the memorialists, and ask the favorable consideration of the House."

A bill for the relief of R. R. Ward, F. G. Halleck, and Jacob Little.

"Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person, or the legal representative of any person, who, on the thirty-first of August, eighteen hundred and fourteen, was the holder of funded stock issued in pursuance of the contract made on the second of May, eighteen hundred and fourteen, for part of the loan authorized by the act of twenty-fourth of March, eighteen hundred and fourteen, entitled 'An act to authorize a loan for a sum not exceeding twenty-five millions of dollars,' is hereby authorized to present his or their claim to the Secretary of the Treasury; and upon proof being made to the satisfaction of the said Secretary that the part of said loan of twenty-five millions subsequently taken by other persons on the thirty-first of August, eighteen hundred and fourteen, was payable, or was actually received by the United States in the paper of suspended banks, or in other depreciated currency taken at par, the said Secretary shall fairly estimate the amount of such depreciation, and shall pay out of the treasury to each one of the said holders of the funded stock as aforesaid, such a per centum upon the amount of stock then held by them, respectively, as will be equal to the depreciation of the currency aforesaid, so as to fulfill the terms and conditions of the contract made as aforesaid, on the second of May, eighteen hundred and fourteen, between the United States and the said contractors, for part of the twenty-five million loan authorized by the said act of twenty-fourth of March, eighteen hundred and fourteen."

Immediately after the committee had closed their deliberations and authorized their chairman to prepare a report, a law was passed establishing the Court of Claims, to which all

eases on the private calendar of the House were transferred by resolution.

The gentlemen who composed the Judiciary Committee were the—

Hon. Frederick P. Stanton, Tennessee.

Hon. John T. Caskie, Virginia.

Hon. James Meacham, Vermont.

Hon. Oregon S. Seymour, Connecticut.

Hon. Sam'l W. Parker, Indiana.

Hon. Henry May, Maryland.

Hon. Hendrick B. Wright, Pennsylvania.

Hon. John Kerr, North Carolina.

Hon. F. B. Cutting, New York.

Great difficulty has heretofore been experienced in getting Congressional committees to devote sufficient time to the investigation to enable them to understand the subject. This committee seemed to be duly impressed with its importance; and their honorable chairman, Frederick P. Stanton, was particularly vigilant in tracing out the facts which constitute the merits of the case. They are such as must convince every intelligent reader that the claim is just; and the public being just, they feel indebted to their committee for their lucid exposure of what every citizen is interested to know.

Having given a full detail of matters relating to finance during the war, the invasion of Washington by a British army, their retreat after burning the Capitol, and the sacking of Alexandria by their fleet, come next in order.

Mr. Barker thinks the battle of Bladensburg was more disastrous to the enemy than has been generally supposed. He, a few days after the battle, visited about fifty of their wounded who had been left at Bladensburg, also the graves of numerous British soldiers and officers at that place. The accounts published in the National Intelligencer of the 1st September, 1814, were as follows:

"The enemy continued last night still at Alexandria, emptying the warehouses, as agreed on in the capitulation, which will be found in our columns; a capitulation of such a nature as the citizens of Georgetown indignantly repelled an invitation to enter into. Two of the frigates, or vessels-of-war, are said to have gone down yesterday; but there are, doubtless, others below to supply their place."

"FURTHER PARTICULARS.

"[The following is furnished the editors of the Patriot by an officer of distinction, who was in the battle.]

"The British left Bladensburg Thursday night by the road to the Patuxent, carrying with them as many of their wounded as forty-nine horses could drag in wagons, carts, and carriages. They left eighty-three wounded behind and thirty men to take care of them; among the former were two colonels and one major. The last died a few hours after. It is supposed their loss, in killed and wounded, amounted to 500. The field and road in front of Commodore Barney's battery was strewn with dead men and horses. None but officers being on the latter their loss must have been severe. Before the commodore ordered a retreat his horse was shot under him. He was himself wounded, with several of his officers and men; and the enemy had surrounded his brave band, having driven his right flank (composed of regulars) from their post and thereby got in his rear. General Ross acknowledged his fire to have been tremendous, and that his first gun laid ten of his men in the dust.

"One advantage their men had over ours was their carrying each from sixty cartridges upwards. They, however, were so loaded with their ammunition, knapsacks, &c., and were so overpowered by their rapid march, that many fell dead in the road. As they passed through Bladensburg their mouths were open, gasping for breath, and their officers were driving them forward with their swords and espontoons. Twelve were buried in one field that had not a wound."

On General Armstrong's return to Washington, he found the inhabitants in a state of great excitement, a British fleet lying in full view opposite Alexandria, sacking the stores of the Quakers of their flour; that they should have been in a state of frenzy will not be thought strange, when it is considered that the Capitol had been lost; that many of them had been called out to defend it; had been exposed to great fatigue in marching and counter-marching, and finally ordered to retreat without firing a gun, and no depot of stores or camp equipage provided on which to fall back; they did not know, or if they knew, did not remember, that these errors and omissions could not properly be ascribed to a cabinet minister, who is only a chamber officer, hence their wrath was erroneously directed against the Secretary of War, and a thousand false reports circulated; among the number was, that to favor the enemy he had caused Fort Warburton to be blown up when it might have been defended; whereupon, the Secretary sent an express to the commanding officer de-

manding an explanation; his letter and the answer thereto, were as follows:

"WAR DEPARTMENT,

"August 29, 1814.

"SIR: I send Captain Manigault with orders to receive your written or verbal report of the causes under which you left the post committed to your charge. In this you will state the orders under which you acted, and from whom received.

"I have the honor to be, &c.,

"JOHN ARMSTRONG.

"CAPTAIN DYSON,

"Corps of Artillery."

"CAMP AT MASON'S ISLAND,

"August 29, 1814.

"SIR: I had the honor to receive your communication of the 29th inst. The orders received from Brigadier General Winder, through Major White, verbally, on the 24th instant, were, in case I was oppressed by, or heard of an enemy in my rear, to spike our guns and make my escape over the river. The enemy approached by water on the 27th, and we had learned on that day, through several channels, that the enemy had been reinforced at Benedict 2,000 strong, and that they were on their march to co-operate with the fleet, in addition to the force which left the city. Under all these circumstances the officers under my command were consulted, and agreed it was best to abandon the fort, and effect a retreat. The force under my command was thought not equal to a defence of the place.

"I have the honor to be, &c.,

"SAMUEL T. DYSON,

"Captain Corps of Artillery.

"Hon. JOHN ARMSTRONG,

"Secretary of War, Washington."

For the protection of the city the Secretary had put at the disposition of General Winder a very large force, as appears by the following letter:

"WAR DEPARTMENT,

"July 17, 1814.

"SIR: In addition to my circular letter of the 12th inst., which subjects to your call the quota of Maryland militia, you are also authorized to draw from that of Virginia 2,000 men, and from the quota of Pennsylvania 5,000. The whole of the militia of the District of Columbia, amounting to about 2,000, is kept in a disposable state, and subject to your orders.

"I am, sir, very respectfully, your most obedient servant,

"J. ARMSTRONG.

"BRIGADIER GENERAL WINDER."

To give time to sober reflection, and in the hope that the angry passions of the vexed mul-

titudes in and about Washington would yield to truth and justice, the President recommended General Armstrong to visit his family. The General left on the morning following his return; on reaching Baltimore he caused a publication to be made in the Baltimore Patriot of the 3d of September, 1814, as follows:

"LETTER OF THE SECRETARY OF WAR.

"To the editors of the Baltimore Patriot:

"It may be due to myself, and is certainly due to others, that the reasons under which I retired from the direction of the War Department, at a juncture so critical as the present, should be fully and promptly known to the public. These reasons will be found in the following brief expositions of facts.

"On the evening of the 29th ultimo the President called at my lodgings and stated that a case of much delicacy had occurred; that a high degree of excitement had been raised among the militia of the District; that he was himself an object of their suspicions and menaces; that an officer of that corps had given him notice that they would no longer obey any order coming through me as Secretary of War; and that, in the urgency of the case, it might be prudent so far to yield to the impulse as to permit some other person to exercise my functions in relation to the defence of the District.

"To this statement and proposition I answered substantially as follows: that I was aware of the excitement to which he alluded; that I knew its source and had marked its progress; that the present was not a moment to examine its more occult causes, objects, and agents; that it ostensibly rested on charges known to himself to be false; that it was not for me to determine how far the supposed urgency of the case made it proper for him to yield to an impulse so vile and profligate, so injurious to truth, and so destructive of order; but that, for myself, there was no choice; that I could never surrender a part of my legitimate authority for the preservation of the rest; that I must exercise it wholly or not at all; that I came into office with objects exclusively public; and that to accommodate my principles or my conduct to the humors of a village mob, stimulated by faction and led by folly, was not the way to promote these; and that, if his decision was taken in conformity to the suggestions he had made, I entreated him to accept my resignation. This he declined doing. It was an extent, he was pleased to say, to which he meant not to go; that he knew the excitement was limited, as well with regard to time as to place; that he was now, and had always been, fully sensible of the general zeal, diligence, and talent which I had put into the discharge of my duty; and that it would give him

pleasure were I to take time to consider his proposition.

"I renewed the assurance of my great personal respect, and my readiness to conform to his wishes on all proper occasions. I remarked that whatever zeal, diligence, and talent I possessed had been employed freely but firmly, and according to my best views of the public good, and that, as long as they were left to be so exerted, they were at the service of my country; but that the moment they were made to bow to military usurpation or political faction, there should be an end of their public exercise. We now parted, with an understanding that I should leave Washington the following morning.

"It has been since stated to me as a fact (to which I give the most reluctant belief) that on the morning of the 29th, and before my arrival in the city, a committee of the inhabitants of Georgetown, of whom Alexander C. Hanson, editor of the Federal Republican, was one, had waited on the President, by deputation, and had obtained from him a promise that I should no longer direct the military defences of the District. On this fact all commentary is unnecessary.

"It but remains to exhibit and to answer the several charges raised against me, and which form the groundwork of that excitement to which the President has deemed it *prudent* to sacrifice his authority in declining to support mine. They are as follows:

"1st. That (from ill-will to the District of Columbia, and a design to remove the seat of government,) I gave orders for the retreat of the army in the affair of the 24th ult., under circumstances not making retreat necessary or proper.

"This charge has not for its support the shadow of truth. The commanding general will do me the justice to say that I gave him no such order, and that he was and is under the impression that the retreat was made earlier than I believed it to be proper.

"To the President I appeal whether I did not point out the disorder and retreat of a part of the first line soon after the action began, and stigmatize it as base and infamous.

"2d. That, in spite of the remonstrance of General Winder, and by the interposition of my authority, I had prevented him from defending the capital.

"This charge contains in it a total perversion of the truth. When the head of the retiring column reached the capital, it was halted for a moment. General Winder here took occasion to state to Mr. Monroe and myself that he was not in condition to maintain another conflict, and that his force was broken down by fatigue and dispersion.

"Under this representation we united in opinion that he should proceed to occupy the heights of Georgetown.

"3d. That I had withdrawn the covering

party from the rear of Fort Washington, and had ordered Captain Dyson to blow up the fort without firing a gun.

"This charge is utterly devoid of truth. The covering party was withdrawn by an order from General Winder, and Captain Dyson's official report shows that the orders under which he acted were derived from the same source, though, no doubt, mistaken or misrepresented.

"4th. That by my orders the navy yard had been burned. This, like its predecessors, is a positive falsehood.

"Perceiving that no order was taken for apprising Commodore Tingey of the retreat of the army, I sent Major Bell to communicate the fact, and to say that the navy yard could no longer be covered. The commodore was of course left to follow the suggestions of his own mind, or to obey the orders, if orders had been given, of the Navy Department.

"5th. And lastly, that means had not been taken to collect a force sufficient for the occasion.

"As the subject of this charge may very soon become one of Congressional inquiry, I shall at present make but a few remarks:

"1st. That no means within reach of the War Department had been omitted or withheld; that a separate military district, embracing the seat of government, had been created; that an officer of high rank and character had been placed in charge of it; that to him was given full authority to call for supplies and for a militia force of *fifteen thousand men*; that to this force was added the 36th regiment of the line, a battalion of the 38th, detachments of the 12th, of the artillery, and of the dragoons, the marine corps, and the crews of the flotilla under the special command of Commodore Barney—making a total of 16,300 men.

"General Winder's official report of the engagement of the 24th ult. shows how much of this force had been assembled, and the causes why a greater portion of it had not been got together. These will be found to have been altogether extraneous from the government, and entirely beyond its control; and—

"2d. That from what is now known of the enemy's force, of the loss he sustained in the enterprise, of the marks of panic under which he retreated, &c., &c., it is obvious that if all the troops assembled at Bladensburg had been faithful to themselves and to their country, the enemy would have been beaten and the capital saved.

"JOHN ARMSTRONG.

"BALTIMORE, *September 3, 1814.*"

The facts attending the resignation of General Harrison and the appointment of General Jackson were these: There had been a very great expenditure of money—said to be something like twenty million of dollars—in the

Malden expedition. The expense of the transportation of each barrel of flour through the wilderness is said to have cost little less than a thousand dollars. This lavish use of money alarmed the treasury, and crippled all the operations of the war in other directions. The War Department, from the necessities of the case, admonished General Harrison to be more provident in such strong terms that he took offence, and resigned his commission, which the then Secretary of War promptly accepted, without consulting the President, who was absent in Virginia; and it having been previously determined in cabinet council to confer on General Jackson such an appointment as soon as there should be a vacancy, the Secretary sent a commission to him.

After the battle of Bladensburg, when the British army was advancing on Washington, at the request of President Madison's lady, Jacob Barker and Robert G. L. Depeyster took from the President's house the original portrait of Washington, by Stuart. With it in charge, they fell into the train of the American army, then retreating past the house, continuing with it until nightfall, when they turned off to a farmhouse near the margin of the Tiber, where they passed the night and left the portrait for safe-keeping. The American army encamped two miles further on, and early the following day it proceeded to Montgomery court-house.

In the morning Barker and Depeyster seated themselves on a fallen tree near a hotel, about which many persons were congregating. wishing to proceed, Barker told a passing black boy if he would go to a distant farm in view, where there were several horses grazing, and procure a couple to take himself and his young companion to the army, he would give him all the money he had in his pocket, exhibiting it, and saying, "Here are seven shillings." A hard looking man, a butcher from Georgetown, on horseback, hearing "shillings" mentioned, eyed the strangers, spoke to the landlord, and drove off at full gallop. Shortly after this Depeyster said, "I am tired of sitting here, let us proceed on foot." Barker replied, "Sit still, we are prisoners; that man," pointing to the landlord, "is guarding us." "Impossible!" said Depeyster. Mr. Barker said, be quiet for a few moments, and he would understand the whole matter.

In about fifteen minutes the butcher, accompanied by an officer and six or eight armed troopers, all in uniform, and on horseback, came galloping over the hill, halting at the tree. The officer politely inquired of Barker and Depeyster their names and residence. Their replies were disputed by the butcher, who insisted that they were English spies; that he had heard Barker offer a black boy "shillings" to procure horses; that if they had such currency as shillings, they must be Englishmen. This was too much for the proud, youthful spirit of Depeyster, who quickly rose from his seat, giving the lie to the butcher. Barker took him by the arm, begged him to resume his seat, and leave the matter to him. He did so, and Barker inquired of the officer what would be his course if they were English. The officer replied, It will be my duty to send you to the army to be tried as spies. Barker rejoined, As we have no proof at hand to establish our nationality, the sooner you send us off the better; whereupon, the officer directed two of his troopers to dismount; they did so, and Barker and Depeyster soon occupied their vacated seats in the saddles. The party rode off for the army, out of sight of the butcher. The officer becoming satisfied who these strangers were, gave them permission to proceed at a more rapid rate, unaccompanied by a single trooper. The weather was very threatening. Barker profited by this indulgence, put spurs to his horse, while Depeyster, feeling indignant at his arrest, preferred to go as a prisoner to the army. They arrived in season to escape a violent gust of wind and rain, and had the honor of dining with General Winder and General Armstrong. During dinner the colonels of two Virginia regiments came in and reported the arrival of their regiments, adding that the heavens had broke loose; that they had no means of feeding their men, or sheltering them from the violence of the storm then raging. The commanding general replied, "Tell your men to go home to their families. The whole material of the army have crossed the Potomac into Virginia, leaving us without means of providing for our army." Mr. Barker, amazed at such a state of things, remonstrated, asking the general if he would disband 2,000 troops anxious to fight, leaving the capital of this country, not 15 miles distant, in possession of an enemy only 4,500 strong.

The general replied, "Troops are pouring in from every direction, and we shall have before night more men than we can feed." Mr. Barker said, "Then send them on foraging parties in every direction, but for God's sake do not release a man." The two gentlemen started immediately for Baltimore, where they purchased all the hard bread to be found in the city, obtained a requisition for teams from the commanding officer of that city, and sent five or six Pennsylvania covered wagons loaded with biscuit the same night for the army, each drawn by five horses. The expense attending this proceeding was afterwards promptly refunded by government to Mr. Barker, although incurred without authority.

The sudden tornado that occurred at this time was so severe that it scattered the burning fragments of the navy yard in every direction, some of which fell into an old well in which the Americans had thrown fifty kegs of powder, when they abandoned the yard, which powder exploded, killing and wounding very many of the invaders. Their officers declared it to be a damned Yankee trick, and, anticipating the explosion of other mines at every step, they fled to their ships under cover of the night.

After the lapse of a month or two, Mr. Barker returned to the farm-house where the painting had been left, and caused it to be taken back to Washington, and delivered to Mrs. Madison; that good lady had it reinstated in the White House as soon as it was rebuilt, encircled by an appropriate frame.

The accuracy of a statement of this affair, made by Mr. Barker and Mr. Depeyster, a third of a century after its occurrence, was questioned by Daniel J. Carroll, esq., when he took occasion to indulge in some very extraordinary remarks in relation to General Armstrong and Mr. Barker.

On the publication of Mr. Carroll's letter, Mr. Depeyster applied to the venerable Mrs. Madison for her version of the story. Her reply appeared in the New York Express, with a copy of a record made by herself on the memorable day of its occurrence, which fully confirms the statement of Messrs. Barker and Depeyster:

"WASHINGTON, February 11, 1848.

"DEAR SIR: I did not receive your favor containing the newspapers, and therefore is

my impatience to assure you of my gratitude for the interest you take in my defence in the little narrative of the picture rescue.

"You will see by the enclosed what was said at the time. The impression that Mr. Carroll saved Stuart's portrait of Washington is erroneous. The paper which was to accompany your letter has not reached me, but I have heard that his family believed he rescued it. On the contrary, Mr. Carroll had left me to join Mr. Madison, when I directed my servants in what manner to remove it from the wall, remaining with them until it was done. I saw Mr. Barker and yourself (the two gentlemen alluded to) passing, and accepted your offer to aid me, in any way, by inviting you to help me preserve this portrait, which you kindly carried, between you, to the humble but safe roof which sheltered it awhile. I acted thus because of my respect for General Washington, not that I felt a desire to gain laurels; but, should there be a merit in remaining an hour in danger of life and liberty, to save the likeness of anything, the merit in this case belongs to me.

"Accept my respect and best wishes,

"D. P. MADISON.

"To ROBERT G. L. DEPEYSTER,
"Westport, Connecticut."

"*Extract from a letter to my sister, published in the sketch of my life, written for the National Portrait Gallery:*

"TUESDAY, August 22, 1814.

"DEAR SISTER: My husband left me yesterday morning to join General Winder. He inquired anxiously whether I had courage or firmness to remain in the President's house until his return, on the morrow or succeeding day, and on my assurance that I had no fear but for him and the success of our army, he left me, beseeching me to take care of myself, and of the cabinet papers, public and private. I have since received two dispatches from him, written with a pencil—the last is alarming, because he desires I should be ready at a moment's warning to enter my carriage and leave the city, stating that the enemy seemed stronger than had been reported, and that it might happen that they would reach the city with intention to destroy it. * * * * I was accordingly ready; I have pressed as many cabinet papers into trunks as to fill our carriage; our private property must be sacrificed, as it is impossible to procure wagons for its transportation; I am determined not to go myself until I see Mr. Madison safe, and he can accompany me, as I hear of much hostility towards him. * * * * Disaffection stalks around us. * * * * My friends and acquaintances are all gone—even Colonel C., with his hundred men, who were stationed as a guard in this enclosure. * * * * French John, a faithful domestic, with his usual activity and resolution, offers to spike the cannon at the gate, and to lay a train

of powder which would blow up the British should they enter the house. To the last proposition I positively objected, without being able, however, to make him understand why advantages in war may not be taken.

"*Wednesday morning, twelve o'clock.*—Since sunrise, I have been turning my spyglass in every direction, and watching with unwearied anxiety, hoping to discern the approach of my dear husband and his friends; but, alas, I can descry only groups of military, wandering in all directions, as if there was a lack of arms or of a spirit to fight for their own firesides!

"*Three o'clock.*—Will you believe it, my sister? We have had a battle or a skirmish near Bladensburg, and I am still within sound of the cannon! Mr. Madison comes not; may God protect him! Two messengers, covered with dust, come to bid me fly; but I wait for him. * * * * At this late hour a wagon has been procured; I have had it filled with the plate and most valuable portable articles belonging to the house; whether it will reach its destination, the Bank of Maryland, or fall into the hands of the British soldiery, events must determine.

"Our kind friend, Mr. Carroll, has come to hasten my departure, and is in a very bad humor with me because I insist on waiting until the large picture of General Washington is secured, and it requires to be unscrewed from the wall. This process was found too tedious for these perilous moments; I have ordered the frame to be broken, and the canvass taken out; it is done, and the precious portrait placed in the hands of two gentlemen from New York for safe keeping. And now, dear sister, I must leave this house, or the retreating army will make me a prisoner in it, by filling up the road I am directed to take. When I shall again write to you, or where I shall be to-morrow, I cannot tell!

"D. P. MADISON."

"Mrs. Madison was born on the 20th May, 1767. She was 83 years, 1 month, and 22 days old at the time of her death. Her name was Dolly Payne. Her parents were natives of Virginia, and ranked among the most respectable citizens of the State. While on a visit to some of her friends in North Carolina, Mrs. Payne gave birth to her eldest daughter, the subject of this memoir, who, although accidentally born in another State, claims the title so dear to all who possess it of being a Virginian. In disposition she is decidedly so, having been imbued by nature with all that warmth, frankness, and generosity which are the distinguishing traits of the Virginian character.

"Soon after their marriage, Mr. and Mrs. Payne joined the Society of Friends, or Quakers, manumitted their slaves, and removed to Pennsylvania. The subject of this memoir was educated in Philadelphia, accord-

ing to the strict system of the society to which her family belonged; a system which has utility for its basis, and which forbids the acquirement of those graceful and ornamental accomplishments which are too generally considered the most important parts of female education.

"At an early age Miss Payne was married to Mr. Todd, a young lawyer of Philadelphia, and a member of the Society of Friends. During his lifetime she continued to live in the simplicity and seclusion of that sect, though, even then, the beauty which became afterwards so celebrated began to attract attention. Soon, however, she was left a widow, with an infant son. After the death of her husband, her father also being dead, she returned to live with her surviving parent, who had fixed her residence in Philadelphia.

"The personal charms of the young widow, united, as they were, with manners cordial, frank, and gay, excited the admiration and awakened the kind feelings of all who came within her influence; and, unaided by the extrinsic and accidental advantages of fortune or fashion, she became a general favorite, and the object not only of admiration, but of serious and devoted attachment. Among many lovers, equally distinguished by their rank and talents, who sued for her favor, she gave the preference to Mr. Madison, then one of the most conspicuous and respectable members of Congress; and, in the year 1794, became the wife of that truly great and good man. From that time until Mr. Madison came into the administration, along with Mr. Jefferson, she lived in full enjoyment of that abundant and cordial hospitality which is the distinguishing characteristic of a Virginia planter. The house was always filled to overflowing with guests, who came not ceremoniously invited to formal entertainments, but freely and kindly bidden to the hospitable board and social pleasures of the domestic circle. Her widowed mother and orphan sisters were made partners of the bounties and blessings lavished on her by a kind Providence; and the fond affection of her husband was evinced by the regard and kindness he showed to all whom she loved and cherished, and, on her part, was reciprocated by a similar attention to the happiness and comfort of his aged mother, who continued to dwell with her son. In this situation Mrs. Madison appeared to be in the very sphere for which nature had designed her. Her circumstances were in perfect accordance with her disposition, and the liberal gifts of fortune were liberally participated with all around her. The happiness she herself enjoyed she bestowed on others; and the sunshine of her own bosom gladdened with its warmth and brightness the little world of which she was the centre—her family and friends.

"Mr. Madison being appointed Secretary of State, removed with his family from his happy home to Washington, in April, 1801.

"After Mr. Jefferson left the city Mr. Madison removed to the President's house, which soon became the centre of a gay and brilliant circle, and yet of social and delightful society. In addition to large dinners every week, a drawing-room was now opened, where the beauty and fashion of the nation found the best theatre for display. Those who remembered the stiff formality and strict ceremonials of Mrs. Washington's drawing-room, anticipated a renewal of the same dull scene. But Mrs. Madison was a foe to dullness in every form, even when invested with all the dignity which high ceremonial could bestow. All unnecessary etiquette was banished, and no requisitions made beyond those which regulated good society in private houses.

"The sunshine of prosperity shed its most unclouded rays on this favorite of nature and of fortune. But prosperity could not spoil her—could not harden a heart susceptible of all the tenderest charities of life.

"Much as she graced her public station, she has been not less admirable in domestic life. Neighborly and companionable among her country friends as if she had never lived in a city; delighting in the society of the young, and never better pleased than when promoting every youthful pleasure by her participation. She still proved herself the affectionate and devoted wife during the years of suffering health of her excellent husband. Without neglecting the duties of a kind hostess, a faithful friend and relative, she smoothed and enlivened, occupied and amused the languid hours of his long confinement. He knew, appreciated, and acknowledged the blessing which Heaven had bestowed on him in giving him such a wife."

On this subject Mr. Barker published the following:

"NEW ORLEANS, *February 8, 1843.*

"SIR: I have this morning, for the first time, seen your letter, dated New York, 1st December, 1847, entitled 'An important incident in the last war with Great Britain,' published in the New York Herald of the 31st January ultimo. In that letter you undertake to question the accuracy of my reply to inquiries made by Robt. G. L. Depeyster, esq., as to that affair. I was mistaken in locating the residence of your late father at Duddington, in place of Bellevue. I believe those farms are in sight of each other. I was not familiar with the names of the various plantations in that neighborhood, and was, therefore, dependent on a gentleman here, from the district, for information as to residence. I was ignorant of the fact that there were three Carrolls of advanced age and great celebrity. My intention in describing the residence of your venerable father, Charles Carroll, of Bellevue, was to distinguish him from the venerable Charles Carroll, of Carrollton.

"It is to be regretted that so slight and immaterial an error as the name of the plantation on which a private individual resided—an error which could so easily have been corrected without exciting any of the angry passions—should have provoked your ire to so high a degree as to have induced you to write and publish more than a column of closely written matter, full of unkind and ungenerous personal reflections. However, we will let those matters pass; while it may be proper for me to point out some little inaccuracies in your statement. First: Mr. Madison and Mr. Monroe did not leave Washington together, nor at the same hour, on the memorable 24th August, 1814, to visit General Winder and to reconnoitre the enemy at Bladensburg; consequently your father could not have accompanied them both. I was present and witnessed the departure of Mr. Madison, accompanied by his servant and Mr. Rush, the Attorney General, and I did not see your father until my return to the White House. I, therefore, presume he accompanied Mr. Monroe and swapped horses with him.

"The day before the fall of the Capitol the President, accompanied by General Armstrong, (your father may have been of the party,) repaired to the Wood-yards, situated twelve miles from Washington, where the American troops were encamped, for the purpose of reconnoitring and seeing General Winder.

"The general was not there, and they returned without seeing him, convinced that the enemy would be in the capital the next day. On that occasion the President's horse may have become lame, and your father may have made the exchange with him, and returned to the White House, by invitation, and remained there until the next day; or he may have exchanged horses with him at the house where the cabinet council was held, before the President set out. Mr. Monroe and General Mason were at Bladensburg assisting General Winder in forming the troops for the fight. General Armstrong, accompanied by George Washington Campbell, reached the spot as did the President, accompanied by Richard Rush. They were all there when the Congreve rockets were first thrown, with which the battle and fight commenced. At what time Mr. Monroe went to Bladensburg I do not know, probably very early, as he was not at the cabinet council convened at seven o'clock a. m., on that day, near the navy yard, at which the President, General Armstrong, Mr. Campbell, Mr. Rush, and Mr. Jones attended. And I think you have also been led into error about your father having been sitting at table with Mrs. Madison after the dinner was over, when the servant arrived with notice of the retreat of our troops.

"The President left Washington at about 9 a. m., in great haste, to recall General Armstrong, who had preceded him about an hour with the President's order to supersede General Winder in the defence of the capital; and

reaching the ground a few minutes before the fight began, said to General Armstrong: 'It is too late to make any change—come with me and leave the defence with the military authorities, where it belongs;' then turned to Mr. Monroe, and other officials who were on the ground, and said the same thing to them. They all bowed assent—General Armstrong remarking, if the President would wait a moment he would see the effect of the Congreve rockets; that the enemy were then preparing to let them off. To which the President had scarce time to reply before the rockets came whistling about their ears, which caused an instantaneous flight of the troops, with the exception of one or two regiments of Maryland militia. I believe the 5th and 9th made fight and distinguished themselves. To those regiments which made good battle were attached General Stansbury and Colonel Pinckney.

"On their retreat, about one mile and a half from Bladensburg, towards the capital, the President met Commodore Barney and his brave men, who dealt out death and destruction to the enemy with tremendous effect, until the commodore was shot down at his gun for the want of having his flanks protected. I had the relation of this affair from the President at the White House, on the day of its occurrence. He remarked that he never would have believed in the difference between regular troops and militia, if he had not witnessed the scenes of that day.

"As soon as our troops broke and retreated, the President sent his servant express to warn his good lady of her danger, with directions to leave immediately. This messenger must have reached the White House by two o'clock, and Mrs. Madison, Mr. and Mrs. Cutts, and servants left immediately thereafter, and there was not any appearance of dinner, or preparation for dinner, about the rooms where the family usually dined. It was too early in the day for such an *exposé*. These facts, together with the absence of the President, the occasion of his absence, and the other attendant circumstances, forbid the idea that your father had, by invitation that day given by the President, been dining with his lady; that the dinner was over; and that they were sitting at the table, after the cloth was removed, when the messenger arrived. I presume he was there when the messenger arrived, and that he had exchanged horses with Mr. Monroe on the road, as you intimate, and not with the President. Mrs. Madison was not the lady to have had dinner over, in the absence of her husband, before two o'clock, when his return was momentarily expected, and especially not when her whole thoughts, and those of her household, must have been engrossed with the exciting occurrences of the day; nor was it the fashion at the White House to have dinner over at that time on ordinary occasions. The messenger preceded me five or ten minutes, having

passed me on the Pennsylvania avenue, and given the information, with a request that I would repair to the house and assist in their departure. I do not perceive the importance of whether this was before or after dinner, or whether your father had, by special invitation of Mr. Madison or otherwise, dined with his lady on that or any other day; nor do I perceive why you have introduced it into your strictures upon my narrative. Whether I found your father there, or whether he came in subsequently, I do not know; but I do know that he assisted in taking down the portrait of Washington and left the house with the President, leaving the portrait on the floor of the room in which it had been suspended to take care of itself, where it remained until the remnant of our army, reduced to about 4,000, passed by, taking the direction of Georgetown, when the portrait was taken by Mr. Depeyster and myself, assisted by two colored boys, from the said room; and with it we fell into the trail of the army and continued with it some miles. Overtaken by night, and greatly fatigued, we sought shelter in a farm house. No other persons assisted in removing or preserving the picture. I acted at the special request of Mrs. Madison, and Mr. Depeyster co-operated with me in carrying her wishes into effect. I always supposed the praiseworthy solicitude originated with her; it would require very positive and clear proof to induce me to change that opinion. It certainly did not originate with me or with Mr. Depeyster; nor have I ever intimated that any other than Mrs. Madison was entitled to the least credit therefor. I imported from London for Fulton the first steam engine that was ever in successful operation for marine purposes; yet it would have been as preposterous for me to have claimed any share in the merit of the invention, as for a postboy who delivers the sealed letter containing some beautiful effusion from a poet of celebrity to claim a share of the bard's renown!

"You have seized on this occasion to repeat the often-refuted calumnies against General Armstrong. You say that your father grossly insulted that meritorious minister of state on his return to Washington, after the Vandals had evacuated that city; and this too in the presence of the President; and that your father was the friend of the President. All this may be true, although I am very unwilling to believe that any gentleman of his high reputation for decorum should have so far encroached on the rules of old-fashioned politeness and propriety, as to take upon himself to judge of matters of high state importance—matters confided exclusively to the President and to Congress—and condemn without a hearing. That your father may have been excited at the moment, and given way to some rash expressions at the prospect before him of having the seat of government removed beyond the mountains,

which then appeared likely to happen, and the consequent depreciation of the value of his property, may very well be; but that he should have cherished through life, and you inherited, and allowed to fester in your bosom, for years after both your father and General Armstrong had been gathered to their fathers, the deep animosity expressed in your letter was not to have been expected; and furnishes a lamentable picture of poor human nature. Such feelings are sometimes tolerated, where there has been a deep personal injury, but never imputed to pure, disinterested patriotism. You say:

"At their first meeting, which took place soon after the enemy had evacuated the city, in presence of the President himself, at the moment General Armstrong on his return to Washington rode up saluting him and shaking hands with some of the members of the cabinet, and before the troops there assembled in the field, who refused longer to acknowledge or obey him, (General Armstrong,) on that memorable occasion when Mr. Charles Carroll, of Bellevue," etc. In this there is some mistake, as I was dining with the President in F street when the Secretary of War returned to Washington; he alighted at O'Neal's hotel, when a messenger came to notify the President, who withdrew from the table, saying, 'General Armstrong has arrived; I must go and see him;' and repaired to the office of the Secretary of State, which was very near said hotel, where General Armstrong met him; they had a long interview—separated to meet again at 8 o'clock that evening—they did meet—had a very satisfactory interview, in which the President told the Secretary he had but one thing to complain of, which was his 'precipitancy in accepting the resignation of General Harrison, and the appointment of General Jackson, in his absence on a visit to Virginia, without consulting him.'"

"When General Armstrong returned to the hotel from this last interview, he informed me that he should leave at sunrise the next morning for New York; that as I was about taking that course he would wait at Baltimore for me. In the morning I accompanied him as far as Bladensburg, and returned to the city; settled all the accounts of the Secretary, and left the next day for Baltimore, with a message from the President to General Armstrong: 'that the President expected him back after passing a few weeks with his family, with assurances that he would sustain him in the office of Secretary of War, in despite of all opposition.' On reaching Baltimore I delivered the message, when General Armstrong replied: 'My determination is taken,' handing me a paper, saying 'read that; it shall appear to-morrow if there is a newspaper in Baltimore that will publish it.' It was an address to the public, complaining among other things of the influence of a faction, a village mob, at Georgetown, over the Washington cabinet. I endeavored to dissuade the

Secretary from his purpose—not succeeding, I caused the address to be published in the Baltimore Patriot on the following day, and thus ended the connexion between General Armstrong and the cabinet of Mr. Madison.

“If your father entertained the opinions you ascribe to him, he undoubtedly mentioned them to his *friend*, Mr. Madison, although he did not proclaim them in his presence at the time you mention. His influence with Mr. Madison could not have been very great, as he entertained opinions directly the reverse, and was determined to sustain Gen. Armstrong in despite of the Georgetown faction, which was resolved to put aside all obstacles to the election of Mr. Monroe to the presidency. Two of their militia generals, of Bladensburg celebrity, it was said, had threatened to throw their epaulettes into the river if the President did not dismiss the Secretary of War. This was all the refusal of the troops to obey him I ever heard of, nor could they refuse, as it is not in the province of the Secretary of War to have any intercourse with the troops except through the commanding general. There were not any troops in the field to refuse to acknowledge or to obey the Secretary of War. If there had been, who ever heard of troops acknowledging or refusing to obey the orders of a mere chamber officer? Besides, General Armstrong was the most unlikely man on earth to violate all military usage by the assumption of such an interference.

“At dinner on the day in question, the President’s lady, in his presence, observed to me: ‘Mr. Barker, your friend, General Armstrong, is expected this day, and I have sent a servant to meet and inform him that there were certain individuals in Georgetown determined to insult him as he passed through; therefore he had better come to the city by a different route.’ My reply was: that, as a New Yorker, I should have been both pleased and very much obliged if pistols had been sent with notice of the threatened insult. The threatened insult was not offered. Perhaps it was those redoubtable men to whom you alluded when you said ‘troops in the field.’

“The President’s omission to place those two militia officers under arrest was the probable cause why the Secretary would not again take his seat in the cabinet. Mr. Madison’s position gave him a much better opportunity to know the merits of General Armstrong’s conduct than any private individual had; hence, it was not strange that the influence of your father, and that of the Georgetown militia, who had not drawn a trigger in defence of the Capitol, should not have prevailed.”

“General Armstrong was not out on horseback after his return until he left, then I was with him, and no such meeting as that you describe took place, hence I consider the whole story a fiction, and for the reputation of your honored father I hope it is so.

“You had better refer to the report of the Congressional Committee of Investigation for the causes which led to the loss of the Capitol, when you will find that illustrious patriot exculpated from blame. He was a chamber officer, and could not, without special authority from the President, take part in the field. His efforts were confined to carrying into effect the laws of Congress. He did this faithfully. Washington was not a fortified city; not a gun was mounted there for its defence. The 10th military district, embracing Washington, was created, and the command, by the influence of Mr. Monroe, given to General Winder, for the protection of the city. This appointment was made in direct opposition to the advice of General Armstrong.

“This happened soon after the unfortunate convention was concluded by General Winder, in Canada, under the direction of Mr. Monroe, then Secretary of State, with Adjutant General Baines, for the exchange of prisoners, giving up the forty-six who had been imprisoned in Ohio to abide the fate of the twenty-three adopted citizens who had been sent to London to be tried for their lives, having been taken fighting against their king, leaving those twenty-three adopted citizens at the mercy of the king.

“And if General Winder did not establish suitable depots of provisions and munitions of war to fall back on in case of retreat, or arrange the force placed at his disposal so as to make a vigorous resistance, surely it was not the fault of a chamber officer, unless he withheld funds which had been appropriated by Congress for that object, which no one pretends. Look at the difference between the battle of Bladensburg and those of Palo Alto, Monterey, Buena Vista, Contreras, &c., in nearly all of which the greatest number were militia. In that of Bladensburg our forces were more than double the number of the enemy, in the other cases the enemy outnumbered our forces three or four to one. Suppose the Secretary at War should attempt to appropriate the renown won by the skill and courage of our officers and soldiers in these Mexican battles, what would be thought of him? And if he has no claim to share therein, when the case resulted otherwise the Secretary of War could not be considered answerable. In General Armstrong’s reply to the inquiry of the Congressional Committee of Investigation, he says: ‘The loss of your Capitol is mainly to be ascribed to that love of life which so generally pervaded the ranks of your militia.’ Washington was not, in a military point of view, an object of attack, no one anticipated so desperate an incursion for the mere purpose of destroying legislative halls, and literary and scientific institutions.

“At that time we were without money wherewith to enlist troops or build forts; we had not enough to pay the enlisting bounty to the

soldier, or to feed, clothe, or move a single regiment—our imports cut off by the war, non-importation laws, and blockades, no money in the treasury wherewith to pay the dividends and stock and treasury notes maturing, how then could the Secretary of War have provided for the defence of the city? His successor did not take any steps to defend the city against another attack, and, although thirty or forty years have elapsed since that occasion, all the financial embarrassments passed away, thirty or forty millions of money given to the several States because Congress did not know what else to do with their surplus revenue, and yet not a man of any party has suggested an appropriation for the fortification and defence of Washington. What better commentary is required on the idle complaint made against General Armstrong for neglecting the defence of the Capitol?

"Your obedient servant,

"JACOB BARKER.

"DANIEL J. CARROLL, esq."

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"NEW ORLEANS, May 5, 1848.

"DEAR SIR: Doctor Carroll has appeared again in the columns of your paper. It is strange that he does not understand human nature better than to indulge in coarse epithets and vulgar phrases. This is an age of reason and dignity of thought, and he who expects to make a favorable impression on the public mind by such scurrility as the Doctor has indulged in will find himself mistaken.

"I should have deemed the author of such epistles unworthy of notice had they not found a place in a respectable newspaper. Your having thought proper to give publicity to this man's abuse of me, it would have been kind in you to have published in your invaluable paper Mrs. Madison's statement and *my reply* to his first effusion, which effusion appeared in the Herald of the 31st January last. In days past you seemed to delight in vindicating your old friend, and did it with great ability and success, inasmuch that you corrected and controlled the public opinion of the nation.

"The Doctor asks his readers to discredit my statement, viz: 'As soon as our troops broke and retreated, the President sent his servant express to warn his good lady of her danger, with directions to leave immediately. This messenger must have reached the White House by 2 o'clock, and Mrs. Madison, Mr. and Mrs. Cutts, and servants, left immediately thereafter,' because Mrs. Madison times a letter written to her sister on that day, at the White House, '3 o'clock,' in which is mentioned the arrival of the servant to bid her fly. The difficulty in taking down the portrait, its accomplishment, its delivery to two gentlemen from New York, the arrival, dialogue, ill-humor, and departure of the Doctor's father, leaving Mrs. Madison dependent on her servants to complete the

work, with the arrangement of other matters necessary for a journey and long absence, may well have occupied an hour, and in nowise rendered the use of the expressions 'immediately thereafter' improper. Had it been otherwise, no person can be expected to recollect time with such precision as to state the exact minute of an occurrence, after a lapse of thirty-three years, without there having been some incident to engrave it on the brain.

"Again: in naming the hour, Mrs. Madison may not have consulted the clock. Had the note been written twenty minutes *after* or twenty minutes *before* 3 o'clock, that hour might have been mentioned without subjecting the writer to any unfavorable criticism; hence that record, so far from discrediting my statement, fully sustains it. The Doctor seems to have taken great offence at the belief expressed by me that the alleged insult offered at that place by his father to the Secretary of War was a fiction.

"The Doctor professes to give the statements of unnamed witnesses. Let the public have their names before their pretended statements are considered or discussed in detail. There should not be any concealment. The opposing party should have an opportunity to ask explanations from all witnesses, and to test their credibility before it is too late. I may yet live a hundred years, but it is not probable that many others who were in the vicinity of the far-famed Bladensburg races will retain their recollection of such unimportant matters so long. Therefore the Doctor's witnesses should appear immediately with his promised statement of facts connected with this affair. One position assumed by those vaunted statements is, that when the Secretary of War returned to Washington he was informed that the President was at Windmill Hill, and that he (the Secretary) repaired to that place for an interview. The Secretary might have been so informed without the President being there. I was dining with him *at that time* at his brother-in-law's, Mr. Cutts, on F street. While at dinner the Secretary's expected return was the subject of conversation; and before the cloth was removed, or the company had left the table, his arrival was announced. The President immediately excused himself, and went to meet him. The President and Secretary were together that afternoon at the house occupied by Mr. Monroe, near O'Neal's hotel. They separated at that place at about 7 o'clock, to meet again at 8, at which hour they did meet, and had their final interview. If the Secretary was really informed, however erroneously, that the President was at Windmill Hill, it is possible that he went there to meet him; and the President, not finding the Secretary at the hotel, may have followed him to Windmill Hill, which, however, is not probable, as there was not any other enemy in the field to reconnoitre than the malcontents referred to by all parties. Yet

they may have met there in presence of the Doctor's father, who, in defiance of all rules of decorum and respect for his superiors, may have descended to the vulgar act of rudely insulting a minister of state in the presence of the President; and the President and Secretary may have proceeded thence to the office of the Secretary of State. All I know of their movements on that afternoon is, that the President left the house of Mr. Cutts between 4 and 5 o'clock, p. m., for the avowed object of meeting the Secretary of War; that they were in consultation before 7 o'clock, at about which hour they separated, and General Armstrong repaired to O'Neal's hotel, where I took tea in his company between 7 and 8 o'clock.

"The Secretary being informed, on his first arrival, that the village mob had circulated a falsehood, with the view of injuring him, viz: that Fort Warburton had been blown up by his order, sent an express to the commanding officer, (I believe Captain Dowson,) requiring him to report under what circumstances, and by whose order, that fort had been blown up. An immediate answer was received from the commanding officer, exonerating the Secretary from all knowledge or a participation therein.

"If the disgraceful scene ever occurred which the Doctor labors to brand on the memory of his father, I conclude it must have been at some other place than that mentioned. Yet, as it is not of the least importance in the professed object of the Doctor's appeal to the public, which was to establish that his father saved, or originated the thought of saving, the portrait of Washington, I shall not pursue the subject of the Windmill Hill further.

"The Doctor says, in his letter of the 31st of January last, that 'by a cunning and insidious falsification of history, I wish to appropriate to myself the honor of an act which might serve to elevate me to a political station.' Again: 'that I wished to appropriate to myself the lion's share of the merit, so clearly belonging to another, and to ride into Congress on the picture of Washington.'

"Such a tissue of falsehood and misrepresentation does not merit notice; yet I may be excused for remarking that, at all times, and on all occasions, in public and in private, I have declared that the idea of saving the portrait did not originate with me; that I acted at the bidding of Mrs. Madison; that all I did was to carry out successfully the directions of that excellent lady.

"In the first publication which excited the Doctor's ire, I say: 'Several persons assisted in taking down the portrait, and the most active was the venerable Mr. Carroll, of Duddington,' when I should have said 'of Bellevue.' For this unintentional and harmless mistake the Doctor continues to empty his vials of wrath, although I made prompt and full atonement the moment the error was suggested.

"The reader may have been misled by my

having said the Doctor's father assisted in taking down the portrait. By Mrs. Madison's record of the transaction, made at the time, it would appear that the Doctor's father had not much more to do with the affair than to remonstrate in bad humor at that good lady's refusal to leave until the work had been accomplished. Having thus remonstrated, he went to join the President, leaving her dependent on her servants to complete the work, about which she wrote thus:

"Our kind friend, Mr. Carroll, has come to hasten my departure, and is in very bad humor with me because I insist on waiting until the large picture of General Washington is secured, and it requires to be unscrewed from the wall. This process was found too tedious for those perilous moments. I have ordered the frame to be broken, and the canvass taken out. It is done, and the precious portrait placed in the hands of two gentlemen from New York for safe-keeping.'

"And again, when writing to Mr. Depeyster, she says:

"The impression that Mr. Carroll saved Stuart's portrait of Washington is erroneous. I have heard that his family believed that he rescued it. On the contrary, Mr. Carroll had left me to join Mr. Madison, when I directed my servants in what manner to remove it from the wall, remaining with them until it was done. I saw Mr. Barker and yourself (the two gentlemen alluded to) passing, and accepted your offer to aid me in any way, by inviting you to help me preserve this portrait, which you kindly carried between you to the humble but safe roof which sheltered it a while.'

"Compare this with what the Doctor says, in claiming that his father saved the portrait, viz:

"An act, doubtless the impulse of the moment, was a suggestion that might naturally strike any right minded American, could not escape a patriot and a citizen, one born and reared there in sight of Mount Vernon, on the very soil of his ancestors, and stamps at once any other solution of the problem itself a "fraud." He being there—fortunately, too, in the room at the time—this picture caught his eye, intuitively, as it were, almost as the alarm was given, that so marvelously caused its preservation.'

"Comment is unnecessary. I never considered this occurrence as entitling me to political favor. It was never spoken of, written, or published in Louisiana, to my knowledge, during the last congressional canvass, to which the Doctor alludes. My political sentiments are too well known over the whole nation, and have been ever since the overthrow of the alien, sedition, and stamp laws, with the reign of terror under the elder Adams, to require any such collateral aid, and as to professions of patriotism in the matter, no such idea ever occurred to me. My thoughts were engrossed in carrying out the wishes of the most distinguished

lady in the nation, whose publication should have operated as an extinguisher on the Doctor's picture story, yet he takes exception at Mr. Depeyster's saying, in his letter to the editor of the Express: 'It appears that he (Mr. Charles Carroll) had no agency whatever in this matter—the saving of the original portrait of Washington.'

"My statement was written on the 8th of February, and published in the New Orleans Delta of the 11th February, and Mr. Depeyster's letter was written in Connecticut on the 15th February, consequently before he had seen my statement; and nothing could be more natural than the conclusion he drew from that of Mrs. Madison's, viz: that Mr. Charles Carroll had no agency whatever in this matter, and as to Mr. Carroll's cutting the canvass from the frame with a penknife, as the Doctor alleges, no such thing happened. The canvass was extended on a light wooden frame, placed in the usual way within a gilt frame, and the latter was secured to the wall, which latter was broken down, and the light frame with the canvass taken out perfect, and continued so until it was returned to the White House. Whether the large gilt frame was broken down from the wall with a penknife or with an axe is not of the least consequence.

"It will have been perceived that, so far as I was concerned, no attempt has been made or sanctioned by me to claim the honor of having originated the thought, or of having removed the portrait from the wall to the floor. My statement is not only supported by the testimony of Mrs. Madison and Mr. Depeyster, but remains uncontradicted, which was, *that at the bidding of Mrs. Madison, the portrait was removed from the floor of the room in which it had been hanging by Mr. Depeyster and myself, aided by two colored boys, and taken by us to the woods, and subsequently returned by me.* Where, then, is the falsification of history alleged by this notable Doctor?

"The Doctor characterized my letter as cunning. If it were, as intended, an unvarnished relation of facts, with self-evident deductions and logical conclusions, it was cunning—attributes nowise pertaining to the Doctor's splenetic effusions.

"Your obedient servant,

"JACOB BARKER."

The intimacy existing between General Armstrong and Mr. Barker continued until the death of the general, the character of which may be estimated from a letter, of which the following is an extract:

"RED HOOK, February 23, 1839.

"MY DEAR FRIEND: * * * * *

"I had the pleasure of seeing your son at my cottage a short time ago, stout and strong. My own health has been bad for a fortnight, and with little prospect of its being better till

weather and roads permit me to take a little exercise in the open air. Whatever be my personal condition, sick or well, believe me to be, unalterably, your affectionate friend,

"JOHN ARMSTRONG."

On the demise of the general, some erroneous and severe strictures appeared in the Commercial Advertiser, of New York, of which Mr. Barker felt called upon to take public notice as follows:

"NEW ORLEANS, April 20, 1843.

"To the Editors of the New York Commercial Advertiser:

"'Tread lightly on the ashes of the dead.'

"You have done great injustice to the fair fame of a departed patriot, in the notice which appeared in your paper on the death of Gen. John Armstrong.

"You say he was dismissed from the cabinet for neglect of duty in defending the capital; this is a mistake; and I call on the honorable George Washington Campbell, and the honorable Richard Rush, the two surviving members of the then cabinet of Mr. Madison, to unite in correcting that error. Pennsylvania will not permit the jewel of which she is so justly proud, nor Mr. Campbell the fair fame of his departed friend, to be thus sullied, when they have the means of doing justice to the memory of the man whom the Almighty vouchsafed to endow most bountifully with those attributes of intellect which distinguish humanity from the brute creation; the true standard by which man should be ranked by his fellows.

"What says Colonel Richard M. Johnson, now in this city, who was chairman of the congressional committee who investigated the cause of the loss of Washington? He also was a soldier, fresh from the battle of the Thames, the reputed slayer of Tecumseh, covered with honor and with wounds, having been perforated with many balls. Would such a man, still smarting with the wounds received, have acquitted the Secretary of War—who had gone into reticacy—if he had been faulty?

"The anecdote you relate, as told by Major Fairlie, is full evidence that General Washington was knowing to the deliberations of the officers of the army who had won for us our liberty, and who were about being dismissed without pay and without the least provision, after seven years of the most arduous service ever endured by brave soldiers, by a Congress composed, as that body was, of a mixture of patriots, pure spirits, stock jobbers and political aspirants.

"The celebrated Newburg letters were the offspring of those deliberations; and General Armstrong was no more answerable therefor than was every member of the club, (which you have thought proper to denominate a conspiracy, composed as it was of nearly all the distinguished military men of the day,) except so

far as regards their inimitable style and composition, the merit of which belongs exclusively to General Armstrong, he having been selected by the assembly to embody their sentiments on account of his wonderfully acute mind and happy faculty of composition. He performed the service at the bidding of his fellows; the Newburg letters were the fruits, and to this hour the palm of superiority to anything extant, in point of composition and forcible argument, is awarded them. They are often referred to by professors in our literary institutions as models of composition to be imitated, worthy of all praise. They received the undivided approbation of the assembled officers; and every true hearted American who reads them at this day cannot but feel proud that they were written by a citizen of this republic, a soldier of the revolutionary army. So much for the Newburg letters. Now for General Washington's opinion of the author.

"After what you have published on the authority of the late Major Fairlie, you cannot doubt that the great and good father of our liberties knew who wrote them. The fact was doubtless so. They were from their first appearance imputed to General Armstrong, were never disavowed, and were known by all the officers of the army to have been written under the aforesaid circumstances.

"The fair inference from your article is, that General Washington knew that General Armstrong wrote those letters.

"To doubt that he knew what was known to all the other officers, believed by the public, and especially appertaining to matters over which General Washington was particularly watchful, would be denying to him the acuteness and penetration which he was known to possess in an eminent degree, and which the American people will be very unwilling to refuse to accord to the bright intellect which, during the long and desperate struggle of our revolution, guided the citizen soldier safely through so many perils.

"Immediately after the formation of the government, Alexander Hamilton, then Secretary of the Treasury, wrote an official letter to General Armstrong, (the record of which is now on the files of the department,) telling him that by the command of General Washington, he tendered to him the office of supervisor of New York, stating that the President regretted that he could not then offer him anything better; that he wished to draw him near to his cabinet, and hoped soon to have something to offer commensurate with his talents, virtues, services, and patriotism, and therefore begged him to accept that office for the moment. This he declined, and it was conferred on Colonel Fish, another distinguished soldier and patriot of the revolution.

"Following up this confidence, General Washington subsequently tendered to General Armstrong the appointment of minister to Por-

tugal, which he also declined. He was appointed Adjutant General of Pennsylvania, and entrusted with the direction of the war against the Connecticut settlers. He was afterward appointed minister to France, and five times elected a member of the United States Senate from New York and Pennsylvania.

"When minister at the court of St. Cloud, he wrote as no minister, before or since, dared to write to the emperor and his ministers; and pending a discussion which arose in consequence of the burning of my ship, the *Eliza*, on her passage from Liverpool to Charleston, by a French fleet shortly out of Brest, he used these emphatic words: 'call you this vindicating the liberties of the seas?'

"After his return from France, he was called again into the military service of his country, and by the immaculate Madison, who had been a close observer of his whole life, he was appointed a general, and given the command of the most important military district of the nation, embracing the city of New York, during the glorious war of 1812. From this post he was elevated to that of chief of the War Department at Washington, where he served with distinguished ability and benefit to his country, until the city was entered by the Vandals of England, when British prowess was exemplified by the conflagration of halls devoted to legislation, literature, and the sciences, and where there had not been a single gun planted for its defence.

"The military ardor and patriotic spirit of General Armstrong induced him to enter the continental service when only a boy; and as early as 1779 he was a captain in the army on the Penobscot expedition, in the hard winter of that year, when only nineteen years of age, and continued in the service until the peace of 1783. And now, after having led such a life of usefulness to his country, when the grave has scarcely closed over his remains, you have thought proper to attempt to attach to his name the stigma of conspirator, to tarnish the unblemished fame of that patriot of the revolution, of the soldier of two wars, of the talented statesman of whom all America and the whole literary world were justly proud.

"You denominate him a conspirator, at the close of the revolutionary war, against the peace and happiness of this republic: and you invoke the name of the immortal Washington in support of this charge. You charge him with neglect of duty, and attribute to that neglect the fall of the city of Washington in the last war.

"These charges are true or false. Washington knew the worth of the officers of the army and the justice of their cause; he knew all about their deliberations, and that the Newburg letters were the result of such deliberations, although written by Armstrong, who had been selected for that purpose on account of his superior intellect, and approved by many if not all the members of his military staff.

His own acts furnish a better test of his opinion of the individual in question than the dictum of a man who never drew a trigger in defence of any cause.

"General Alexander Hamilton also knew all, and what said he?

"President Adams, the elder, knew all, and what said he? Mr. Jefferson knew all, and what said he? Mr. Madison knew all, and what said he? The Livingston family, including the chancellor, knew all, and what said they? His native State, Pennsylvania, and his adopted State, New York, knew all, and what said they? They all vied with each other in conferring honors on him. Would they have done so if they had considered him a conspirator against the peace and honor of his country?

"The editor of the United States Gazette, taking your biographical notice for his guide, says:

"General Armstrong distinguished himself as a minister at Paris, but he lost nearly all his credit by the loss of Washington city, when he was Secretary of War, where he was charged with total neglect of means to defend the capital of the nation, even after he had been earnestly solicited to supply those means. That was the end of General Armstrong's public career."

"You have forgotten the history of that transaction, or you could not have placed on paper a statement so totally at variance with the facts.

"You have been compelled to pass over a long life devoted to the discharge of the duties of various and numerous offices of high trust, without a single occurrence furnishing food for detraction, and go back to what at most can only be viewed as an indiscretion of an ardent youth, to enable you to administer to the appetites of those who have watched over the life of General Armstrong for evil.

"The defence of Washington city was entrusted to General Winder. Circumstances arose connected with his negotiations with Adjutant General Baynes of the British army for the exchange of prisoners, which negotiation resulted in a convention for the exchange of all the prisoners in America, by which the safety of the twenty-three adopted citizens taken in arms against the king, and sent to England to be tried for their lives as traitors, had been overlooked, and the forty-six British prisoners who had been confined to abide the fate of those adopted citizens, were set at liberty by the terms of that convention. This occurrence, the particulars of which it is not necessary here to mention, led to the creation of the tenth military district, and the appointment of General Winder to the command.

"General Armstrong, although at the head of the War Department, had no hand in this selection, nor did he approve of it. Very soon after this appointment the British landed their

forces in the Chesapeake, and were marching on Washington. The capital could not have been put in a state of defence without fortifications and regular troops, or the assembling of the militia from the neighboring country. The former required the authority of law, and a vast expenditure of money which was not in the treasury; and Congress adjourned on the 27th April previous without making any other provision than granting authority to the President to borrow twenty-five millions of dollars without limit as to the price to be allowed.

"The editors of the Commercial Advertiser, and their political coadjutors, know full well the pains they took to decry the credit of the government, and to defeat that loan, and if on this subject their recollection should prove frail, let them turn to the files of their own papers.

"The means, the sinews of war, being withheld by these men, it ill becomes them to attempt to stigmatize the illustrious dead for not using that which they themselves denied to the nation.

"As to the militia, the investigation which took place by Congress immediately after the invasion of Washington city, established that General Armstrong issued his requisitions on the governors of Virginia, Maryland, Pennsylvania, and, I believe, Delaware, in full season, and for an adequate number of men to have defended the capital against double or treble the force sent against it by the British. These requisitions were not successful—why, I will not attempt to explain here; but surely it was not the fault of the Secretary of War, a mere chamber officer, who urged them to the utmost of his capacity.

"At the last moment there was a large assemblage of volunteers and militia; but General Armstrong had no confidence in the military skill of the commander to wield such a force, and to make a successful defence. They were principally encamped at the Wood-yards, twelve miles from Washington city. The Secretary communicated his apprehensions to the President, and invited him to accompany him to the camp, to which place they repaired. The commanding general was not to be found, and the troops appeared to be in a state of great exhaustion from having been marched and counter-marched without the necessary repose to fit them for battle, and few or no scouting parties had been sent out to harass the enemy on their march, and they were then within twenty or thirty miles of the city.

"The President and Secretary returned to Washington, convinced that if the enemy marched on the city they would have an easy conquest. I was that evening present, and heard General Armstrong make this statement to George Washington Campbell, then Secretary of the Treasury, and to William Jones, then Secretary of the Navy. These high functionaries replied to the Secretary: 'Why

do you not take command of the army yourself, and defend the city? You are a revolutionary officer, and understand military tactics.' His answer was: 'I have no right to do so; my duties are by law confined to my chamber.' 'But,' said Mr. Campbell, 'the President can authorise you, and if he will do that will you take the command?' 'I will,' said General Armstrong, 'although it is rather late.' Whereupon the Secretaries of the Treasury and of the Navy repaired to the President's and solicited his authority for General Armstrong to take the field. The President deferred the matter until the next morning, when he promised to convene a cabinet council at 7 o'clock at the navy-yard and decide. In the meantime General Armstrong took a proposition to the President, from a citizen not in the military service, to blow up the Capitol with his own hands, in case the enemy should enter the buildings, provided he would authorise it, and order to be furnished a corporal's guard, a few miners, and the necessary quantity of powder. This was declined, the President saying it would have a better effect in arousing the nation into resistance for the enemy to do it. The cabinet council met at the appointed time and place, and their deliberations resulted in granting authority to General Armstrong to take the command. For this purpose he, accompanied by the Secretary of the Treasury, left on horseback, setting off at full gallop for Bladensburg, to which place our troops had retreated from the Wood-yards.

"At nine o'clock of the fatal Wednesday, which was the 24th of August, 1814, in less than an hour, the President, accompanied by the Hon. Richard Rush, then Attorney General, came out of the house where the cabinet council had been assembled at the navy yard, mounted their horses and also went off at full gallop toward Bladensburg. I was present and saw them all depart. They all arrived before the battle commenced, and the President on his arrival countermanded the authority given to General Armstrong, and requested all the members of the cabinet to accompany him off the field of battle, leaving to the military authorities, to whom it belonged, to conduct the operations of the day, adding that it was too late to make any change.

"The battle began immediately after this announcement by the President, by a discharge of Congreve rockets from the British lines, whereupon the militia, for the most part, broke and scattered in great disorder; there were some honorable exceptions—the 5th and 9th regiments of Maryland and Stansbury's regiment of volunteers fought well, and the Hon. Mr. Pinckney, one of their number, was severely wounded. An express had been sent to Commodore Barney, who was stationed at the navy-yard for the protection of a bridge across the Potomac, with somewhere about 300 sailors and 500 marines, to repair to Bladens-

burg; for which place they started on a dog trot at the first notice, taking with them two pieces of small artillery. Before they reached Bladensburg our army had retreated, and the British were advancing on Washington. Barney halted as soon as he got within the reach of cannon shot, planted his guns on the public road, and opened a destructive fire on the British troops. Had our troops protected Barney's flank, he could with his small band have annihilated the whole British force. As it was, they suffered severely, losing nearly a fourth of their number, including those who deserted, and marched on, leaving their dead and wounded on the field. I visited the wounded at Bladensburg the same week; there were nearly fifty, many of them officers, and the limbs of many of those who had been hastily buried by the road side were to be seen projecting from their rude graves.

"The President had a full view of the conflict, and noticed the havoc made. He said the fire from Barney's guns made perfect lanes through the ranks of the enemy, but that the troops filled the voids thus created, without turning to the right or to the left to see whether their companions had lost a head, a leg, or an arm, adding: 'I could never have believed that so great a difference existed between regular troops and a militia force, if I had not witnessed the scenes of this day.' I had this from Mr. Madison's own lips at the White House, before the enemy reached the city. Barney's flanks not being protected, the enemy advanced on both sides of the road and shot him down and many of his men at their guns, and proceeded to the occupation and the burning of the city that night.

"With what justice, then, I would ask, could General Armstrong be held answerable for this disaster? In his memorable answer to the letter from the Congressional committee, inquiring into the causes which led to the loss of the city, he, after assigning many other reasons, said, 'that it was mainly to be attributed to that love of life which so generally pervaded the ranks of your militia.'

"As soon as the British had evacuated the city, the militia officers of the district, who had ingloriously fled from the field of battle without firing a gun in their country's cause, or in defence of their women, their little ones, or their own firesides, attempted to excite against the Secretary of War the most unwarrantable prejudice, demanding of the President to dismiss him; hoping thereby to make him the scapegoat, knowing full well that the country expected some atonement for the disgrace which had come on our national arms by the neglect of Congress to provide the means, and by the absence of proper knowledge and want of spirit on the part of those whose duty it was to have died at their posts, and not have allowed the capital to be entered by a hostile

force, except over a bridge composed of the dead and the dying.

"At this crisis, Mr. Madison recommended General Armstrong to avail himself of that opportunity to visit his family in New York for a few weeks, when the excitement would subside and he could return to his office in quiet.

"General Armstrong, however, determined immediately to leave the department forever, thinking the President had listened too much to the Georgetown militia officers, and did leave the next morning without resigning, under an arrangement to wait at Baltimore for me to join him, which I did on the following day, and at Baltimore assured him, from the President, that he had no wish nor expectation that he would resign; that he expected him back as the chief of the War Department in two or three weeks, and that he would assuredly support him therein.

"General Armstrong's reply was: 'My determination is taken; here are my reasons, (handing me a paper which he had that day prepared;) they will appear in print if a newspaper can be found free enough to give them publicity.' They did appear the next morning in the Baltimore Patriot, and the General thus, by his own voluntary act, terminated his employment in the public service, retiring to his estates in Dutchess county, where he passed in affluence the remainder of a long life, devoting himself to the pursuits of literature and agriculture.

"At President Madison's last interview with General Armstrong, he stated to him that there was but one thing in his whole administration of the War Department with which he was not well pleased, and that was, that during his (Madison's) absence on a visit to Virginia, he had accepted too hastily the resignation of General Harrison, conferring the appointment on General Jackson, who, it had been previously determined, should be called to fill the first vacancy that should occur.

"Thus, you see, you are mistaken in saying that 'he was dismissed from office.'

"General Armstrong was as true to his friends and to his country as the needle to the pole; and the intimate relations which subsisted between us for thirty or forty years will not permit me to be silent when the fame of such a man is assailed after he has been gathered home, and especially not, when I recollect that there are but few left who are knowing to all the facts I have stated; and I am also anxious that the hero of New Orleans should know, before time shall have triumphed over nature, before he too shall have bequeathed to his country the immortality of his name, the undying glory of his achievements—that General Armstrong was his friend.

"Very respectfully, your obedient servant,
"JACOB BARKER."

Mr. Barker lost most of his vessels during the war, namely: the "Catherine Jane," from St. Petersburg to New York, and the "Rodman," from New York to St. Petersburg, foundered at sea; no insurance on vessel or cargo. The "Dolphin," (the cargo but not the vessel belonging to him,) from St. Petersburg to New York, captured by the British and burnt off Halifax; the "Joseph Ricketson," from Archangel to Liverpool, captured, sent to Scotland, vessel and cargo condemned, no insurance; the "Champlain," from Norfolk to Nantucket, captured by the British, vessel and cargo lost without insurance; the "Eliza Ann" stranded on Ireland, no insurance; the "Leander" on Narraganset beach, no insurance; the "Juno," lost at St. Michaels, no insurance; the "Driade," destroyed by a hurricane at New Orleans, no insurance; and the "Lady Madison," from St. Petersburg to London, stranded in the Baltic, with a cargo which cost Mr. Barker £53,000 pound sterling, which had been sold to the British government to great profit; arrangements had been made to invest the proceeds in British fabrics, to be shipped to New York under the opinion of the American minister at London, that, on receiving the news of the repeal of the orders in council the President would, by proclamation, recall the war and annul the non-importation law. But for the loss of this ship her voyage would have resulted in a profit of something like \$250,000, in place of which Mr. Barker suffered a severe loss, there being no insurance on freight or profit, the ship insured for only half her value: the cargo was insured in London with the clause of honor, yet the underwriters refused to pay, on the plea of its being enemies' property. Litigation ensued, their plea was overruled, from which they attempted to appeal, when the court refused them a certificate, saying, that after agreeing to the "clause of honor," and receiving seven guineas per cent. premium, the plea was too dishonorable to be entertained by a British court. Pending this litigation many of the subscribers to the policy failed, and Mr. Barker lost ten thousand dollars by their insolvency. The ship "Jason," from St. Petersburg to New York, with a cargo of Russian goods, was stranded and lost in the North Sea, immediately preceeding the war; his other marine losses during his commercial pursuits

were very great, while some of his adventures yielded magnificent profits.

When news of peace was received Mr. Barker considered his fortune made. The bill to establish a national bank had, as he supposed, been passed, giving a preference of the stock to the holders of war loans, requiring only six per cent. in specie; to enable him to benefit thereby, he had purchased one hundred thousand dollars in specie, paying therefor in the notes of the New York Banks at a difference of twenty-three per cent., called premium, for the specie. Unfortunately, news of peace travelled too soon, although we were not then blessed with railroads and telegraphic communication; the bill had passed both Houses and was lying on the clerk's table to have the single question put, "will the House concur in some (verbal or immaterial) alterations which had been made by the Senate," a mere question of time for organization, made necessary by that which had been exhausted in debate after the bill had been drawn, when an express on its way to Alexandria for a speculation in flour, passed through Washington with the news of peace, which so elated Congress that the members left their seats without waiting for an adjournment, and they could not again be induced to consider the question of a national bank during that session. This bill was framed with a view to induce monied men to subscribe to its stock; it was the best ever devised; it did not impose any bonus, and if it had then become a law would have worked wonders.

Specie and the paper of the New York banks were very soon nearly equalized by the operation of peace, so that in place of profiting by putting it into a national bank, Mr. Barker lost heavily by its disposal; while the improvement of public stocks was trifling for a long time on account of the very great amount of money required to pay off the army, and other expenses of the war, and the disposition of the mercantile men to use their funds by a return to their ordinary commercial pursuits.

The embarrassments of the treasury continuing, and the banks that had suspended specie payments being unable to resume, Congress, at its next session, was induced to establish a United States Bank, the stock of

which soon advanced to fifty per cent. premium, although it had to pay into the treasury fifteen hundred thousand dollars bonus, and had not anything like the privileges set forth in the bill which was defeated by the news of peace. Had the news been delayed a single hour the bill would have passed and its stock would have been worth one hundred per cent. premium. Mr. Barker considers this hour to have varied his fortune to the extent of two millions of dollars.

All those who had lent him money on a pledge of the stock far below its cost, insisted on a return of their money, wishing to invest it in stock before the advance took place, which was sure to follow the peace, or to embark it in some commercial pursuit; leaving Mr. Barker no alternative but to sell his stock and forego the profit he had anticipated in case peace found him in possession of it. Hence one disappointment followed another. Yet he continued buoyed up with hope and resumed his commercial business at Liverpool and at New York, and established a bank in Wall street, became a candidate and was elected a member of the New York senate. His election was warmly contested by the federal party, the Clintonians, and the Burrites. Over their united forces his friends triumphed. The effect of this combination, although it failed in its chief object to defeat his election, was to defeat the democratic ticket for the assembly, with the exception of two Clintonian members. The discipline of the party was such that it gave to Mr. Barker a position the most likely of all others to estrange his political partisans. The offices of the State were distributed by a council of appointment, consisting of four members, one from each senatorial district, and the governor, the latter making all the nominations. He adopted a rule to take the recommendation of his political friends, members of the legislature, from their several abodes. Mr. Barker being his only political friend from the city in either House, the whole patronage of the city centered in him. He was particular not to recommend any one he did not consider qualified to perform the duties of the office, frankly telling those he could not recommend of their want of qualification. A vast proportion of the applicants were, of necessity, disappointed and became dissatisfied

with him; a result sure to follow the distribution of the "loaves and fishes," for the want of a sufficient number of offices to feed them all.

His banking operations were vehemently opposed by the Wall street gentry. They instituted a suit against him, alleging that he was violating the restraining act, which resulted in a decree that the act was confined to associations and did not relate to individuals. Great pains were taken to alarm the public in relation to his circulation and deposits; and, finally, a law was procured from the legislature extending the restraining act to individuals.

Before which, and while he was in attendance on the Senate, a ship arrived from Liverpool with advice of the failure of his house at that place, which caused a very great run on his bank. On receiving notice of which he returned to the city, was the first to land from the steamboat, drove with great speed to Wall street, the carriage making its way through the crowd with some difficulty. He alighted at the bank door, to the surprise of all, and to the disappointment of his opponents, who were ranged on the opposite side of the street in momentary expectation of seeing the doors of the bank close. They had not heard of the boat's arrival, or of the river's being free from ice. He was too quick for them, and remarked to all how glad he was to see them, saying "Come in, come in—come in and get your money;" caused the back room to be thrown open, additional clerks to be placed there, with plenty of specie. All that wished it were supplied. A great number put the notes in their pocket and went home, believing that there was no cause for the alarm which had been created. Mr. Barker's stores were full of goods, hemp, sail-cloth, iron, sugar, tea, salt, &c., &c., of which he sold a sufficiency at auction to replenish the vaults of his bank and returned to Albany to his senatorial duties.

The members of the Senate, with the chancellor and judges of the supreme court, constituted at that time a "Court of Errors." As member of this court, Mr. Barker's opinion came in conflict with that of Chancellor Kent, on the question of a ship's intended deviation from a voyage insured. Mr. Barker held that so long as she remained within the limits prescribed in the policy there could be no deviation, however determined the insured might be

to deviate. The chancellor held that there were exceptions to this rule; and being informed that Mr. B. intended to deliver a contrary opinion, he took great pains to demonstrate, on paper, the soundness of his views on the subject which are to be found in 14th Johnson, page 46. There were but these two opinions delivered on the occasion. The court adopted Mr. B.'s opinion by a vote of 15 to 8; which law, thus laid down, has not since been disturbed either in England, France, or America.

Mr. Barker had the satisfaction to agree in opinion with a large majority of the members of the senate on nearly all the subjects which came before that body while he was a member. The duelling law was an exception. And what is remarkable, he was the first and, the writer believes, the only person who ever suffered, judicially, under that law. The people very soon took it in hand and annulled its objectionable features.

Banks and canals were the order of the day; Mr. Barker insisted on such legislative provisions in bank charters as would secure specie currency or its equivalent. "Pay or liquidate," was his doctrine; and as to the canal project, which was zealously pressed by the friends of Mr. Clinton, that gentleman having placed his whole political fortunes on the issue, Mr. B. doubted, his constituents were opposed to connecting the treasury of the State with so momentous an undertaking, most of the members from the middle and southern districts voted against it, while the western members voted in its favor.

Senator Van Buren believed that sufficient information had not been obtained to warrant the experiment, suggested or yielded to a proposition to organize a board of canal commissioners, and the appropriation of \$25,000 for the purpose of defraying the expense of the necessary surveys to enable subsequent legislatures to decide advisedly, which were adopted, and Mr. Clinton was appointed one of the commissioners, for all which Mr. Barker voted; the project succeeded, it popularised itself, and Mr. B. always thereafter insisted that Mr. Clinton was entitled to the honor thereof.

The strife about the canal continued to agitate the State for years; the dominant party being opposed, flushed with victory, displaced

Mr. Clinton from the board of commissioners; this was over-acting, the people always being just, when made to understand a subject, retorted on those unwise leaders, and elected him governor, in which Mr. Barker took a conspicuous part.

The division of the spoils soon produced another revolution, and Mr. Clinton had to retire from the gubernatorial chair for a season. On the approach of another election, Mr. B. considering his restoration desirable, proposed to him such a movement, it was resolved on; when Mr. B. induced Samuel H. Jenks, esq., the celebrated editor of the *Nantucket Enquirer*, to remove to New York and conduct a newspaper in support of Mr. Clinton's election; he did so, and Mr. B. established the "Union" in New York, at his individual expense, for that purpose, in relation to which Mr. Clinton wrote thus:

"ALBANY, August 31, 1824.

"DEAR SIR: Your very sensible letter of the 16th arrived when I was at Lebanon Springs; and it has confirmed the high opinion which I have uniformly entertained of your discerning views of men and things.

"I have recently seen C. G. H., and I am persuaded that he is well disposed to you in all respects.

"I have seen a letter, from a respectable source, which mentions, as a certainty, that Ohio, Illinois, and Indiana will go for Jackson.

"This, if true, will destroy the hopes of Clay, and greatly undermine the imputed strength of Adams.

"I have this moment heard from Onondaga county.

"It has chosen friendly delegates.

"Madison will do the same to day.

"The Union is conducted with great ability. Mr. J. has certainly genius of no common order.

"Mrs. C. joins me in kind regards to you and your excellent wife.

"I am, sincerely your friend,

"D. W. C.

"JACOB BARKER, esq."

—
[Extract.]

"ALBANY, October 23, 1824.

"DEAR SIR: I received your letter. A late tour to Delaware on business as regent of the University has interrupted the regularity of my correspondence. The Union is conducted with talent, and it will afford me great pleasure to be of use to its able editor.

"Your exertions in getting the nominating committee have been singularly useful, and your views of its proper course are certainly

judicious. I would carry the conciliatory plan to the fullest extent of honorable concession, and its only limit should be the prescription of honor, and the obvious necessity of not offending our own friends.

"Our adversaries here are very animated, and have deluged the country with hand bills, which are little better than so much waste paper.

"Mrs. C. unites with me in sincere regards to you and wife.

"I am, dear sir, yours, sincerely,

"DE WITT CLINTON.

"JACOB BARKER, esq."

Mr. Crawford was at that time the democratic candidate for the presidency, he was overtaken by sickness, which rendered his election hopeless.

The electors for New York were to be appointed by the legislature of that State; the two great political parties were so nearly divided that the few friends of General Jackson held the balance of power, they would not support Mr. Crawford. Mr. Barker, by letter, suggested to Mr. Van Buren that it would be good policy in the friends of Mr. Crawford to support General Jackson; that gentleman could not be induced to withdraw his support from Mr. Crawford. General Jackson, Mr. Clay, and Mr. Adams were also candidates; neither obtaining a majority, the question went to Congress, resulting in the election of Mr. Adams.

Immediately after his inauguration, he offered the mission to London to Mr. Clinton, being declined, it was conferred on Rufus King. Mr. Van Buren and his political friends thereafter united in the support of General Jackson, and never faltered in his support of that great man.

A public meeting was held in New York soon after the election of Mr. Adams, over which Mr. Barker presided; which meeting put in nomination General Jackson for the next President, Chief Justice Spencer for the next Vice President, and recommended an amendment of the Constitution, increasing the term for which those public functionaries should be elected, limiting their services to one term.

This was the first nomination of General Jackson for the presidency after the election of Mr. Adams. He was elected for the next term.

The currency and the United States Bank were among the most important subjects which

agitated the public mind during his administration.

Mr. Barker left New York for New Orleans in 1834, during the money panic created for the purpose of counteracting the measures of General Jackson in relation to the United States Bank. Passing through Washington he had several conversations with him on the subject; exhibited to him a bill he had prepared for such an institution, to be established at Washington, with branches in such States as would authorize them. The President examined the bill attentively; said he believed such a bank would be very useful; that he had said the same thing to Mr. Biddle; was supposing he could control the government and the nation with the monied power of the bank; would not listen to the necessary alterations in the charter to render it acceptable to the people. The general authorized Mr. Barker to say to Mr. Van Buren, also to Senators Wright, Taney, Rives and Talmadge, that if they would pass such a bill he would sign it; these gentlemen, with the exception of Messrs. Rives and Talmadge, replied that they could not support any bank; that nothing would satisfy the people but gold and silver. Mr. Talmadge replied that he was prepared to support the measure. Mr. Rives being about to resign his seat in the Senate, no application was made to him.

The pet-bank experiment was adopted on the removal of the deposits from the United States bank; it failed, which induced the favored measure of General Jackson, the specie circular.

On Mr. Van Buren succeeding to the presidency, the opposition made strenuous efforts to get rid of the specie circular, which he successfully resisted, when there was a general suspension of specie payments by the banks. President Van Buren, by special message to Congress on 4th September, 1837, recommended the independent treasury; and in his messages of December, 1837, 1838, and 1839, reiterated the recommendation of such a law; it was adopted, and in his annual message of December 5, 1840, he stated the beneficial operation of the system during the brief time it had been in force.

The irredeemable paper currency, the commercial embarrassments and financial derangements, caused universal distress; and the peo-

ple were made to believe that it arose from the measures of General Jackson and Mr. Van Buren—measures adopted to cure evils arising from extravagance and over-trading; evils fostered and encouraged by the banking system then in operation; this delusion led them to the election of General Harrison and John Tyler.

On General Harrison's coming into power, Mr. Clay and his political partisans, composing a decided majority of both Houses, set about establishing a national bank, which would, doubtless, have succeeded, but for the death of General Harrison. Mr. Barker was in favor of the measure; he apprehended that it would be defeated if the sub-treasury should be previously repealed; he considered the benefit of the circulation of the nation so great that the local banks would not allow a law to be made which would transfer that benefit from themselves to a national bank, except for the purpose of getting rid of the sub-treasury and specie circular; these excellent measures operated so severely on the local banks as for them to prefer a national bank.

The bill repealing the independent treasury preceded that establishing a bank. Pending its discussion Mr. Barker recommended that the bank charter should contain the repealing clause, transferring the business of the sub-treasury to the bank without producing any interruption, so that if the bank bill failed the sub-treasury might remain in full force, on which subject Mr. Barker addressed Mr. Clay, as follows:

[Extract.]

"NEW ORLEANS, *May 13, 1841.*

"DEAR SIR: Having taken great pains for the last ten years to impress the public of both political parties of the absolute necessity of a national bank and a national bankrupt law, I beg leave to make a few remarks here on the necessity for prompt action rather than on their general utility, as you have been frequently furnished with my opinions in detail in print, and for reason that so far as I understand your opinions you also favor both of these measures.

"The nation look to you for the adoption of both, and if disappointed at the extra session of Congress, the great object of the political change which has taken place will be lost, as new feelings, new men, with new objects, will spring up before the annual session, which will not be likely to pass either law. Allow me, therefore, to entreat you to exert yourself in

favor of prompt action. These measures, if adopted at once, will have a very good effect everywhere, and without them we shall linger along for 10 or 15 years in our present palsied and impaired state.

"It will not make any difference where you place the 'mother bank;' it will do business some hundred millions of dollars annually, and that amount of business will afford profit enough to compensate the most able men in the nation for leaving their residence and adopt that where the bank may be located, and the fewer the directors for the mother bank the better. The mother bank should not discount; that business should be left to the branches, and for this purpose there should be a branch at the same place where the mother bank is located, as well as at other places; and to get rid of the constitutional objections as far as possible, which will probably be the most formidable the friends of the measure will have to contend with, it will be best to establish the mother bank at Washington, with power to establish branches wherever the State legislature may authorize it.

"You are in favor of the repeal of the sub-treasury and specie circular; without undertaking to discuss the objections to these measures, I beg leave to suggest that if you repeal them in any other way than by substituting a national bank therefor, admitted to be infinitely better, a national bank will not be created. The local banks are too powerful to be resisted, and if they can again get intrusted with the public funds and enjoy the whole circulation of the nation, they will not allow a national bank to be established, which would assuredly supplant them. The only way to convince them is by continuing the sub-treasury and specie circular until a national bank is established; that they, the local banks, have no chance of again getting the least foothold with the government.

"Excuse my freedom of expression, and believe me, as ever, your assured friend,

"JACOB BARKER.

"The Hon. HENRY CLAY."

Mr. Clay said to his friends, "No, it would be better to repeal at once and have a clear stage for a good bank." General Harrison's death intervened, when Mr. Clay's friends remarked to him, that there was no certainty that Tyler would approve any bill establishing a national bank. Mr. Clay replied, "Don't tell me that any President dare veto a bill passed by a large majority of both Houses of Congress, and called for by the united voice of the nation."

Very soon after the death of General Harrison, the acting President, in a message to Congress, recommended the repeal of the independent treasury, saying, that it had been

twice condemned by the people. His recommendation was adopted by Congress; they repealed the law, and then passed a bill incorporating a national bank, which he vetoed; its friends, unable to procure a sufficient majority to pass the bill in despite of his veto, the question was disposed of, probably for ages, if not forever, leaving the local banks in possession of the whole circulation of the nation.

The acting President was mistaken when he said the people had twice condemned the independent treasury; the question had not been put to them; it was put immediately thereafter, and was decided in its favor by the election of James K. Polk to the presidency, under whose administration the specie circulation was continued and the independent treasury revived. For these two great measures, we are indebted to General Jackson for the one, and Mr. Van Buren for the other; they have saved the nation and its institutions, and entitled them to be esteemed as public benefactors, and should immortalize their names, if possible, far more important than that of the glorious defence of New Orleans.

During the Mexican war the opposition again attempted to create a money panic, when Mr. Barker procured the publication of the following article in the Commercial Times of New Orleans:

[COMMUNICATED.]

"We hear that money is very scarce in the northern cities. This is all an artificial contrivance of the banks to make Congress repeal the sub-treasury, or abandon the specie clause. They had better abandon the war with Mexico than do either.

"It is idle to pretend that the government cannot build as strong places of deposit as the banks; appoint as competent clerks; make their transfers from one city to another as safely, with as little expense, and with as much expedition as the banks can do it. They have taken the business into their own hands, and are bound to employ able clerks and a sufficient number to do the work well.

"For this, it is entitled to the benefit of the circulation, a full indemnity for all the expense; give it back to the banks, and they will gladly loan money to the government. The deposits and circulation will enable them to do so, and the profits on the use of the money derived therefrom abundantly pay all expenses.

"The government can furnish a better circulation than the local banks; why, then, yield it to the banks?

"If the Secretary of the Treasury finds it in-

convenient to attend to the business, and is willing to yield it, let a national bank be established at Washington, to be conducted under the supervision of Congress; but by no means let the funds of the nation return back to the local banks, over which Congress has not any control.

"The writer, has ever since the war of 1812, considered a national bank necessary for the prosperity and convenience of commercial men, as well as of the government. A paper circulation, equivalent to specie, is indispensable; habit is more powerful than law; besides, we have, with a mixed currency, prospered as a nation, from its infancy to manhood, more than any other nation ever before prospered; why then abandon it? A mechanic might as well abandon the use of his tools; and if the use of paper is to be continued, why not subject it to the supervision of Congress?

"Treasury notes, redeemable at sight with specie, are better for a currency than the notes of the local banks. The paper of a national bank will be more convenient than either, and the profits on the public deposits and circulation would more than pay all the expenses of the establishment, and enable the bank to disburse and transfer the funds of the government to all parts of the nation, freeing the government from the whole expense of conducting the sub-treasury.

"The specie clause in the sub-treasury, does not do any harm; *it only gives to treasury notes a preference over bank notes.*

"Under the sub-treasury there will not be half as great an accumulation of specie as there would be in the banks, if they kept and disbursed the public money; because, if properly conducted, nearly all the receipts, except for such loans as the government may negotiate, will be in treasury notes. The money borrowed should be made payable by instalments, when one instalment would be paid out to the public creditors before another became due; and the money thus expended, in the ordinary course of trade, would return to the banks and to the loan contractors in season to pay the next instalment, so that one or two instalments would furnish a sufficient amount of specie to pay fifty or a hundred instalments.

"The Secretary of the Treasury has made a great mistake in sending specie to New Orleans; we have more than we know what to do with, therefore shall have to send it back. Treasury notes would answer every purpose for currency, bearing only a nominal interest; those they very properly redeem with specie at sight; and those bearing 5 2-5 per cent. for exchange; these, so far as not absorbed by public dues, should be redeemed with stock bearing six per cent. per annum, irredeemable for 15 or 20 years, leaving the dealers in stock to battle the price among themselves. Treasury notes, this plan adopted and pursued, will furnish the government with means suffi-

cient to go through with the war, however long it may last, taking care not to put out more treasury notes bearing only a nominal interest than can be redeemed at sight with specie.

"It is not to be believed that the Secretary wished the sub-treasury bill defeated in the Senate, as has often been averred in the whig newspapers, or that he is hostile to this favorite measure of the democratic party; if he is not hostile, he will not allow himself to be carried by the local banks, who are invoking the aid of heaven and earth to get back the deposits and circulation of which the independent treasury deprives them.

"If the Secretary finds bank facilities essential, let him follow in the footsteps of the immaculate Madison, who originally had doubts of the constitutionality of a national bank; finding such an institution necessary to the successful conducting of the war against Great Britain, those doubts disappeared, and he recommended to Congress the establishment of a national bank.

"Had the law allowed collections to be made in the specie paying bank notes, the banks would have been glad to receive treasury notes at par to protect their specie; this not having been done, to do it now would be making a great concession; but to allow the use of bank notes after received for any other purpose than to draw specie, would be to give up the independent treasury and put the administration in the hands of the local banks. They would control the destinies of the nation and never allow Congress to establish a national bank.

"Such an institution should be established at Washington, with branches in such States as may authorize the same; this will obviate the constitutional objection. General Jackson was in favor of such a bank, said he believed it would be very useful, and authorized the writer of this letter to say to Senators Wright, Rives and Talmadge, that if Congress would pass such a bill he would sign it.

"NEW ORLEANS, *December 30.*"

He also caused to be published over his signature his financial views as follows:

"The panic-makers are the worst enemies we have. In relation to other matters, they have been too successful. Their denunciations of the annexation of Texas; of the stand taken by our government on the Oregon question; and of the proposed independent treasury, have done more mischief than could possibly have resulted from those measures had they been promptly carried into effect.

"The independent treasury should be established without further hesitation, in order that the funds of the nation may be kept separate and distinct from the concerns of the local banks, and when once adopted those banks will be rendered harmless and it will work well. It should not have been repealed

without the establishment of a national bank, a better measure I admit, yet as the public are deceived on the subject, a national bank cannot be established until the public mind is disabused of the prejudice which the local banks are constantly inculcating. The whole question is in a nut shell. Can we get rid of the local banks? We cannot, and I confess that however disagreeable it may be, we are doomed to tolerate them. This being a settled question, give us, say I, a national bank, subject to the supervision of Congress, rather than local banks in the back woods and commercial cities. The local banks have possession of the public funds, and so long as this be tolerated we shall all be slaves to the money power. Let Congress do its duty and pass the independent treasury without further delay. It is the best measure ever devised for the good of the nation, save and except a national bank, subject to the supervision of Congress.

"Our habits make the use of bank notes necessary. They answer in lieu of specie to an amount, say one hundred millions of dollars. The amount will be about the same whether they be issued by a national or a State bank. Consequently, if the local banks can prevent the establishment of a national bank, they have the exclusive use of this one hundred millions of dollars of the people's money, without paying any interest therefor; hence, they are hostile to the establishment of a national bank and, also, to the sub-treasury. The latter is to take from them public deposits, but not the circulation.

"These same men have been using the Oregon question, the Texas question and the independent Treasury for the purpose of creating a panic and thereby intimidating Congress; and so successful have they been in alarming the public mind, by withholding the ordinary facilities from business men, that they have already done more mischief than would have followed from the independent treasury had it been promptly adopted. Let Congress pass the law at once, if they wish to prove to bank kings that they cannot rule the nation.

"When the Harrison Congress was about repealing the sub-treasury, I addressed a letter to Mr. Clay, telling him that if they did not first create a national bank, no bank could be established. The sub-treasury once out of the way, the public money would return to the pet banks, and they would not permit a national bank to be established or any law to be passed which would deprive them of the advantage of keeping it. Mr. Clay was not then acquainted with the extent of the power of the local banks. The sub-treasury was repealed, the public money returned to the pet banks, the bank bill defeated, and Mr. Clay enlightened as to the power they exercise over the concerns of the nation to create panics at pleasure.

"Such has always been the use made of the

bank power. When Congress was about terminating the existence of the first United States Bank in 1811, they threatened death and bloody bones, and endeavored to intimidate Congress by prating about the ruin which threatened our merchants. The moral firmness of the democratic party was then equal to the occasion—a renewal of the bank charter was refused and no panic ensued. The bank was glad to accommodate its debtors to aid its collections, and it had debts of its own to pay, and they worked together and the mammoth was then extinguished with as little flickering as is an exhausted candle.

"So will it be with the present panic as soon as the independent treasury shall be established.

"Jefferson's embargo, Madison's non-importation laws, and finally the prosecution of the glorious war of 1812, had to encounter the same sordid, selfish conduct on the part of the panic makers.

"Very sincerely, yours, &c.,

"JACOB BARKER.

"NEW ORLEANS, May 8, 1846."

The good policy, nay, more, the absolute necessity, of keeping the public money separate and apart from the local banks has become so apparent that all parties subscribe to its wisdom.

Whenever there are to be large payments from the treasury the banking interests feel a buoyancy, and every department of trade is more or less invigorated by such feeling and payments; whereas, if the same amount of money was to be drawn from the banks, it would create a panic and vast derangement among commercial men; and, while the writer cordially approves, as he always has done, of the specie circular and independent treasury, he believes that a national bank would be very convenient and serviceable to the commercial interests of the country; that but for the gold discoveries in California and Australia, specie payments could not have been continued by the local banks; and should another general suspension take place, resumption cannot be brought about without the aid of such an institution, and, in case of an extended war, it will become necessary to enable the government to use the circulating medium, which would furnish countless millions without interest, which is now enjoyed by the local banks, in violation of the spirit if not the letter of the Constitution, which forbids the States issuing letters of credit. This franchise of the public cannot be used by them any way so beneficially as

through a national bank. The next best plan would be treasury notes.

On the subject of the currency and local banks Mr. Jefferson remarks thus:—(Jefferson's Works, volume 4, pages 198 and 220.)

"I am sorry to see our loans begin at so exorbitant an interest; and yet, even at that, you will soon be at the bottom of the loan-bag. We are an agricultural nation. Such an one employs its shavings in the purchase or improvement of lands or stocks. The lendable money among them is chiefly that of orphans and wards in the hands of executors and guardians, and that which the farmer lays by till he has enough for the purchase in view. In such a nation there is one, and one only resource for loans sufficient to carry them through the expense of a war, and that will always be sufficient, and in the power of an honest government punctual in the preservation of its faith. The fund I mean is *the mass of circulating coin*. Every one knows that, although not literally, it is nearly true, that every paper dollar emitted banishes a silver one from the circulation. A nation, therefore, making its purchases and payments with bills fitted for circulation, thrusts an equal sum of coin out of circulation. This is equivalent to borrowing that sum, and yet the vendor, receiving payment in a medium as effectual as coin for his purchases or payments, has no claim to interest. And so the nation may continue to issue its bills as far as its wants require and the limits of the circulation will admit. These limits are understood to extend with us, at present, to two hundred millions of dollars, a greater sum than would be necessary for any war. But this, the only resource which the government could command with certainty, the States have, unfortunately, fooled away, nay, corruptly alienated to swindlers and shavers under the cover of private banks. Say, too, as an additional evil, that the disposable funds of individuals to this great amount have thus been withdrawn from improvement and useful enterprise and employed in the useless, usurious, and demoralizing practices of bank directors and their accomplices."

"It is time, then, for the public functionaries to look to this. Perhaps it may not be too late. Perhaps, by giving time to the banks, they may call in and pay off their paper by degrees. But no remedy is ever to be expected while it rests with the State legislatures. Personal motives can be excited through so many avenues to their will, that in their hands it will continue to go on from bad to worse, until the catastrophe overwhelm us. I still believe, however, that on proper representation of the subject, a great proportion of these legislatures would cede to Congress their power of establishing banks, saving the charter rights already granted. And this should be asked, not by

way of amendment to the Constitution, because until three-fourths should consent nothing could be done, but accepted from them, one by one, singly, as their consent might be obtained. Any single State, even if no other should come into the measure, would find its interest in arresting foreign bank paper immediately, and its own by degrees. Specie would flow in on them as paper disappeared. Their own banks would call in and pay off their notes gradually, and their constituents would thus be saved from the general wreck. Should the greater part of the States concede, as is expected, their power over banks to Congress, besides insuring their own safety, the paper of the non-conceding States might be so checked and circumscribed, by prohibiting its receipt in any of the conceding States, and even in the non-conceding as to duties, taxes, judgments, or other demands of the United States, or of the citizens of other States, that it would soon die of itself, and the medium of gold and silver be universally restored. This is what ought to be done. But it will not be done. *Carthago non delibitur*. The overbearing clamor of merchants, speculators, and projectors, will drive us before them with our eyes open, until, as in France, under the Mississippi bubble, our citizens will be overtaken by the crush of this baseless fabric, without other satisfaction than that of execrations on the heads of those functionaries who, from ignorance, pusillanimity, or corruption, have betrayed the fruits of their industry into the hands of projectors and swindlers."

The business of Mr. Barker's Liverpool house was principally with the United States, which ceased with the declaration of war; its affairs closed, debts paid, and Mr. Barker withdrew from the firm; when the partner at that place embarked largely in the trade between England and Russia, and other foreign places, on his individual account; which resulted very disastrously, in consequence of the sudden peace which took place between Great Britain and the continental powers.

On the close of the American war, Mr. Barker's connexion was resumed, he then being ignorant of the extent of the business in which his partner had been individually engaged, who, in the hope of winding it all up satisfactorily, incurred for the new firm responsibilities, which brought about the failure, the news of which came upon Mr. Barker by surprise.

The effect of the Liverpool failure, and the opposition to his banking operations, finally overthrew his bank; all of its depositors, and a vast proportion of its circulation, were paid

THE LIBRARY
OF THE
UNIVERSITY OF ILLINOIS



John Wells.

at sight; yet the suspension created a strong prejudice with all those who continued to hold his bank notes, which had a withering influence on his further operations.

Distressed by numerous applications to redeem bank notes in the hands of needy persons, which, although the amounts were small, he had not the means at command to redeem, on their first presentation, he called upon his friend, John Wells, esq., stating his troubles, and observed, "I believe I had better shoot myself." That gentleman replied, "Are you crazy? How much do you want?"—taking up his pen and commencing to write. Mr. Barker, wanting five thousand dollars, replied three thousand. Mr. Wells gave him one of his most earnest looks, saying, "Is that all?—if you want more, name it now, and forever after hold your peace."

"That will answer;—but why do you give it to me? If I should die you will never get a cent."

Mr. Wells, saying "That's none of your business," went on writing, and handed to Mr. Barker an order for three thousand dollars in the stock of the Bank of America, saying, "I have no money; make that stock answer your purpose."

The useful life of that meritorious gentleman was soon after terminated by the yellow fever; when Mr. Barker hastened to return the stock to his administrator, as will be seen by the following:

"FEBRUARY 23, 1824.

"This certifies that thirty shares of the Bank of America, lent by John Wells to Jacob Barker, have been transferred to the administrator of the estate of J. Wells.

H. LAIGHT, *Administrator*.

An admirable commentary on the life and character of Mr. Wells is to be found in 2d Cowen's Law Reports. It speaks thus of that good man:

SKETCH OF THE LIFE AND CHARACTER OF MR. WELLS.

"It is by no means the least testimony to the high stand which the late John Wells, esq. occupied at the bar of this State, that his death deranged and shortened, in a very considerable degree, the calendar of the present session. Repeated applications were made and granted for the postponement of arguments to the next term, with a view to the preparation of other counsel. Upon making one of these motions, Mr. B. F. Butler took occasion to bestow a

brief and extemporary, but beautiful and appropriate eulogium upon the memory of this distinguished advocate. The bar of Albany, and those attending court from different parts of the State, assembled at the court room in the Capitol, (the late Chancellor Kent in the chair,) and, on motion of the late Chief Justice Spencer, resolved to wear the accustomed badge of mourning for thirty days. A similar meeting was holden, and similar resolutions passed by the bar of the city of New York; and the obituary notices of the day abounded with very just remembrances of Mr. Wells' worth and genius. He was indeed the pride of our bar; and I need make no apology for occupying this place in presenting his surviving brethren of the profession with such particulars of his life and character as have come to my knowledge.

"John Wells was born on the farm now owned by Mrs. E. Davis, about one half mile south of the present village of Cherry Valley, in the county of Otsego, in this State. The accounts as to the time of his birth, which I have been able to obtain, differ, between 1769 and 1770. The surrounding country was then a wilderness. During the war of the revolution, which shortly followed, the settlement where he was born took its full share in the horrors and cruelties of Indian warfare; and has recently been distinguished by lying in the neighborhood which Mr. Cooper selected as the scene of his beautiful novel, "The Pioneers." Wells' paternal grand-parents were both natives of Ireland, and formed part of a little band of colonists, who, several years before, penetrated the then extensive wilds of that region, and settled in the valley where the village now stands. His maternal grand-father was the Rev. Mr. Dunlap, who came also from Ireland with the colonists.

"His father, Robert Wells, owned a farm in Cherry Valley, on which he resided in 1778, with his wife, by whom he had five children, John being the second. These, together with an unmarried brother, John, and a maiden sister, Jane, composed his family, who, with him, were the only descendants of the paternal grand-father, that bore the name of Wells.

"During the summer of that year, the indications of a descent from the savages were so numerous and striking, that the father became seriously apprehensive for the safety of his family; and he accordingly removed them to Schenectady, as a place of greater security. But, in the autumn, his fears subsiding, they returned, and arrived at the farm on the 11th of November, with the exception of his son John. He had sometime before been placed by his father at school in Schenectady; and having become much engaged in his juvenile studies, and being moreover a great favorite of his aunt Eleanor Wilson, with whom he boarded at that place, it was determined that his pro-

gress as a learner should not be interrupted, and he was left to continue his attendance at school. It was probably owing to this circumstance that he survived the conflagration and murders which soon after desolated the neighborhood of his birth.

"His father's family, with several of his neighbors, who had been driven abroad at the same time, and for the same cause, had been lulled into a fatal security by those false appearances which their aboriginal enemies knew too well how to practice; and on the 11th November, 1778, almost every family resident at the valley, had thus been lured to return within reach of the tomahawk. During the same month of November, and but a few days after Wells' family had reached the valley, the celebrated Brandt, learning that the harvest of his vengeance was full, seized the opportunity to effect a descent which he had for a long time meditated. This chief, with one of the Butlers, at the head of a party of savages and their British allies, advanced upon the valley in the night; and the connexions of young Wells were among the first who fell victims to their fury. All his relations, resident at the farm, were murdered; Mrs. Dunlop, his maternal grand-mother, then living at the valley, shared the same fate; and her husband, with other members of her family, were taken prisoners. His paternal residence was burned to ashes, and the whole settlement plundered and finally destroyed. Young Wells had a brother Samuel, who was older than himself by about two years, Robert and William, who were younger, and a sister Eleanor, aged about five years. His youngest brother was not more than six months old. Indeed, the massacre at Cherry Valley affords one of the most awful illustrations of the rule which governs Indian warfare. 'The indiscriminate destruction of all ages, sexes and conditions.'

"Cut off at this early age from the tenderest attachments of life, and left (like Logan) without one living mortal who was naturally and immediately interested in his fate, young Wells would have been either abandoned to poverty and wretchedness, or bent down to the ordinary drudgery of life, had not his warm hearted and affectionate aunt, Mrs. Wilson, interposed in his behalf, and formed him to a higher destiny. For his future prospects in life, she saw him thrown entirely upon her friendship and resources; and though I cannot learn that the latter were very ample, he found the former not of that sunshine character to be dissipated by the dark cloud which had gathered over his fortunes. Through her exertions, which were, of course, indulged and aided by her very kind and generous husband, he enjoyed the best opportunity for acquiring an education which the country then afforded. He continued several years at the grammar school in Schenectady, whence his aunt Wilson removed to Long Island, where he studied with the Rev. Mr.

Cutting, of Jamaica. He was afterwards at school in New York and at Newark, (New Jersey,) at which last place he finished his studies preparatory to entering college. He pursued his collegiate course at Princeton, where he graduated in 1778, having an oration assigned him as his part in the commencement of that year. He took both the degrees of A. B. and A. M. at this college.

"Though of an age, at the time, not fully to realize the appalling story of Brandt's descent, and the fate of his family and neighborhood, yet, accompanied as it was by scenes of similar cruelty, occurring throughout the whole period of the revolution, the mental wound which he had received was deepened by the dreadful associations continually brought back to his memory; and the recollection of his early loss finally made a permanent impression upon his mind. His health not being the best, and his struggles to excel as a scholar unremitted and severe, these causes combined, gave him, at one time, an air of melancholy and premature decay. Just before the close of his studies at Princeton, his friends entertaining serious apprehensions that he was in a hopeless decline, he left college, for a short time, pursuant to their advice, with a view to recruit his health. The experiment succeeded in a very considerable degree; and he was enabled shortly after to return, and complete his course of classical studies.

"After graduating, he must shortly have entered upon his clerkship; for his license as attorney was signed in 1791. This clerkship, together with the professional studies accompanying it, he pursued principally with Mr. Edward Griswold, then in full practice as attorney and counsel in the city of New York. Mr. Griswold, some time since, retired from business and now resides at Hempstead, in Queen's county, (L. I.) He had arisen to very high reputation in his profession. As a proof that he eminently deserved this reputation, it is enough to mention, that after a retirement of several years, he is still sought out and consulted with the greatest advantage and deference, by some of the most eminent counsel in the city of New York; and this too upon the most intricate heads of the common law. Colonel Burr lately mentioned to me that Mr. Griswold was the only man he ever saw who loved the black-lettered lore of the common law for its own sake; and Mr. Wells, in the full zenith of his reputation, always spoke of the professional habits and acquirements of his early tutor and friend, in terms of the highest respect. The example alone of such a man must have been of very great advantage to his pupil; and I am told that in one respect, at least, there was a remarkable similarity between them. This was in a most powerful and singular habit of mental abstraction, which enabled them to sit down in the midst of their families, or a crowd of company, separate

themselves from the sports, or the business, or the noise around them, and insulated and deaf to every thing that was passing, pursue their studies, equally unconscious of any thing like interruption as in the deepest retirement of the closet.

"On concluding his clerkship, Mr. Wells was thrown upon his own resources; and these were nothing beyond his profession. He immediately opened an office at a room in Pine street, New York; but though the stores of legal knowledge, which he laid in during his clerkship, must have been more ample than usual, his industry great, his attendance upon his office constant, and the execution of what business was committed to his hands faithful; yet, absolutely precluded from the more splendid labors of the forum, by lacking the degree of counsel, wanting in connexions, and those friends who could successfully take any immediate interest in his professional success, and located among a large number of attorneys, who had in a measure monopolized the management of those suits which are the most valuable to this class of the profession, it is not singular that during the time which intervened between his first and second law degree his prospects should have been discouraging. His business was accordingly very limited; affording him but a scanty livelihood. But he was not yet so far disheartened as to relax in his studies; and he came to the bar, after the ordinary term of practice as an attorney, well prepared for the higher duties of the profession. His license as counsel was signed in 1795. He still continued his practice in Pine street, his business receiving some trifling accessions, but not to an extent which would be, in the least, flattering to the most sanguine temper; and, for several years afterwards, he pursued the humble avocation of a mere collecting attorney, under very discouraging prospects.

"The step was deemed a hazardous one by his acquaintances, when he added to his other expenses by undertaking the charge of a family in the city of New York, where, even at that early day, the maintenance of a rank and appearance necessary to command respect required means far beyond his reach. The anxiety to fulfill an early matrimonial engagement, seemed, therefore, to have got the better of his prudence, when, in 1796, he intermarried with Miss Lawrence, daughter of Mr. Thomas Lawrence, of Newtown, Queen's county, (L. I.) This respectable lady, though not portionless, did not bring an accession to Mr. Wells' means of living, which would have prevented his future embarrassment under a less fortunate turn of his prospects, than afterwards followed. But she brought him what was more important—an intelligence; evenness of temper; patience and fortitude, which enlightened, sustained and smoothed his passage along an obscure and rugged path to fortune and eminence; illumined the gloomy period of adverse

vicissitude, and cheered his rising hopes with the smile of sympathy and affection.

"There is nothing in Mr. Wells' history manifesting that precocity of intellect, or those intuitive off-hand powers at the bar, which has produced so many instances of premature and rapid elevation, in the morning of manhood. Indeed, these are, in general, but equivocal arguments for a well-earned and stable reputation. Too often does such a genius blaze forth with a fire and imagination sustained by very scanty materials, and exhibiting but a short lived beauty. It glides before us like a meteor along the sky, till exhausted by the excess of its own brilliancy, it sinks in darkness, and is extinguished forever.

"It is remarkable, that with Mr. Wells, possessing the strength which he afterwards exerted, not only the ordinary duties of his profession, but even his legal studies should have been rather a matter of necessity than choice. He has frequently been heard to declare, that previous to 1804, a snug farm and five hundred dollars would have separated him forever from his profession. He was attended with a modesty, a diffidence, an unassuming temper, which he overcame with the greatest difficulty; and it was with pain and reluctance that he commenced his career in the more public walks of his profession. That he entertained serious thoughts of abandoning it forever, between the years 1801 and 1804, there is little doubt; for it was during this period that he sought for and obtained the post of assistant editor to one of the newspapers in the city of New York.

"Those warm political contests by which our country was distinguished during the period of his more retired labors, among the choice spirits which it called into action, did not leave Mr. Wells unemployed. His pen had been much engaged in the defence of his political friends and their measures, as well as in severe criticisms upon the measures and men of the adverse party, in the course of which he had produced several of the most respectable essays with which the newspapers of the day abounded. Few of these are preserved, (an event perhaps not to be regretted,) and they were in no other respect useful to him than as exercises in composition. In this point of view they were much more so than is usual, from the hasty manner in which they were produced. But with him, having considerable leisure, and being determined to make them a source of improvement, he was able to bestow all the attention of an Addison upon the style of his productions. Almost the only flattering distinction which he had received from any of his party arose from this cause. The late General Hamilton, having read in the newspaper some very fine anonymous articles, traced the authorship to Mr. Wells. On this occasion, I am told, he ascertained his residence, sought him out, and complimented him for the genius he had dis-

played in the character of a political essayist. This flattering attention from the leader of his party, who was himself truly a model of fine writing in the same department, probably strengthened Mr. Wells' determination to turn editor. The employment afforded him a probable relief from the pressure of poverty; and he believed himself more peculiarly qualified to shine in this than in any other pursuit.

"There is an anecdote of Mr. Wells, relating to the period of his editorship, which, as it accords with his exalted character for morality during his whole life, may not be improperly inserted here. Mr. —, a friend of his, being invited to the field, at a period when the practice of duelling was deemed most genteel and fashionable, in the city of New York, called upon Wells to act as his second. This he very cheerfully and readily undertook; but with a degree of adroitness, almost without a parallel in those times, he succeeded in settling the dispute without a meeting, and this even to the satisfaction of those who entertained the greatest scruples whether the (then) rigid code of honor could be satisfied without blood or the brand of cowardice upon, at least, one of the parties. At a time when the laws of honor, like those of Draco, may be said literally to have been written in blood, it is no mean compliment to the dexterity of Wells, that he should have been enabled to compass such an object, in so satisfactory a manner. To distinguish away a trial by battle, pending between two hot political combatants of that era, by setting up an exception in the law, and convincing the court of its existence, shows that he was not a proficient in the common law alone. 'It may be truly said of him, (as of another eminent lawyer) that he could walk a narrow isthmus, between opposing doctrines, where no man dare to follow him!'

"The station of an editor, it may well be supposed, was the last which would inspire a confidence in the client, that his professional business, of an every day character, would be faithfully attended to; and his ordinary income as a lawyer, small as it had been, was probably diminished by this circumstance. But in the end it proved what it is said the conduct of the *Edinburgh Review* was to the famous Scotch advocate, Mr. Jeffrey, 'both friendly and hostile to him as a barrister.' His after efforts at the bar shewed him a splendid illustration of Lord Bacon's maxim, that writing forms the correct man. But this alone is not the most striking point of view in which it influenced his success as an advocate. It finally proved the direct and leading cause of bringing him before the public with that blaze of talent (long hidden by the force of adverse circumstances) which shone with a brightening lustre to the latest period of his life.

"The late Mr. Cheetham, (at the time of which I am speaking) edited the leading paper of the majority. As such, he had recognized

in Mr. Editor Wells his most formidable antagonist in the political tournament. Cheetham had been prosecuted in the supreme court of this State by Mr. W. S. Smith, the son-in-law of the late President Adams, for a libel, published in the '*American Citizen*,' a paper then edited by Cheetham. This publication, which reflected very severely upon the conduct and character of Mr. Smith, a leading member of the minority, called forth their greatest animosity, embittered by their recent defeat in the State. Encouraged by the hope of wounding, and perhaps prostrating their opponents, by the destruction of their favorite editor, they had arrayed against him a veteran host of talent, as one means of compassing their object. Cheetham and his friends perceived that in justice to themselves a force should be placed upon the defensive, qualified to meet and sustain the attack with the most formidable front, and the greatest possible firmness and effect. And though little hope was entertained of parrying or repelling it entirely, it was believed that proper arrangements would mitigate the blow, and prevent any decisive consequences which might otherwise follow the defeat. Reasoning from the force with which Wells wielded the pen in the cause of the minority, Cheetham drew inferences directly the opposite to those of his friends; and contrary to their advice retained Mr. Wells as counsel in the defence. He went further, and accompanied this retainer with a request that he should not consider himself the mere associate with the other very able counsel employed in the defence, but should take a leading part in the conduct of the trial. The cause was tried in the city of New York, (my informant thinks,) in 1804. He did not, on this occasion, disappoint the high expectations which his very partial client had formed of him. His defence was able and masterly, exhibiting a strong, distinct and accurate view both of the law and the facts of his case, vindicating those enlarged and liberal boundaries which, founded in the constitution and policy of his country, limit the range of speech and of the press, in a manner which would not have derogated from the character of an *Erskine*. The result was highly favorable to the defendant. The damages were mitigated to a trifle, compared with what was confidently hoped on one side, and feared on the other; and a crowd of listening citizens, whom a deep interest in the event had drawn together, as spectators of the trial, were left to the full force of curiosity and wonder, on witnessing the astonishing and apparently preternatural metamorphosis which the young advocate had undergone. That a genius like his should have been left to plod on in the drudgery of the profession, for a period of thirteen years, in the city of New York, nearly unnoticed and unknown, with employment so scanty as almost to have driven him from his profession in despair, seemed a reflection upon the

audience, who had been listening to him with sensations of delight and admiration. But a few weeks, and even days, shewed a disposition to atone for their neglect. A spirit of self-complacency, arising from a consciousness of his superior discernment, mingled with gratitude to Mr. Wells, for his faithful exertions in the defence, drew forth in the next American Citizen one of the best of those pithy and energetic compliments to his young friend and counsellor, which Cheetham always knew how to bestow with the finest effect. These things were decisive of Mr. Wells' fate. The giant was aroused from his slumbers, and stalked abroad at noon-day.

"From a stinted paucity of business and clients, whose visits had heretofore been 'few and far between,' he was daily retained in causes of greater or less magnitude. Engagements multiplied upon his hands, and he soon bade adieu to his editorial labors, and devoted himself exclusively to the bar. Yet he was the last to be persuaded of his powers, and he would occasionally relapse into those fits of self-distrust, which had been one great cause of so long withholding him from his proper rank in the profession. He was, shortly after the trial of *Smith vs. Cheetham*, retained as counsel to defend a cause in the common pleas of New York, a duty which he discharged in his finest manner. For this he received a fee of five dollars. But, unconscious of his strength and rising reputation, he forgot that even this humble retainer was a debt due to his talents, and construed it into an act of marked kindness and regard on the part of his client. So grateful was he for what he considered a favor personal to himself, that he ever afterwards remembered this gentleman with the greatest friendship and affection; and in his more prosperous days anxiously courted every opportunity of doing him a favor. Mr. Cheetham was never forgotten by him; and, I am told, that the gratitude of the counsellor extended itself to the children of the client, in various acts of patronage and protection, when their father was no more.

"By leading a life strictly temperate and regular, Wells had overcome the frailty of his constitution, and attained a state of cheerfulness and good health; two important and essential requisites to sustain the amazing weight of professional labor which was about to devolve upon him. His rise was rapid; his practice became extensive and lucrative. He was snatched from want, and placed in easy circumstances, and an increasing reputation, both for talents and industry, promised him a proportional enlargement of business and profit. He availed himself fully of all these advantages. He pursued the study and the duties of his profession with unceasing assiduity. He furnished his office with a respectable library, which he was continually enlarging in proportion to his means. He appeared at the bar

of the supreme court for the first time, in *Elting and others vs. Scott and Seaman*, (2 John. Rep. 137,) in 1807, where he was sustained by his able friend and senior in the profession, Mr. J. O. Hoffman. Since that time his name is associated with almost every volume of our juridical history.

"Having taken up his pen in the cause of the minority, which continued so with very short intermissions, from 1801 to the present time, he, of course, standing identified with them, did not reap any of those advantages to which an active politician of his intellectual rank might otherwise have looked, as the reward of his labor. He was, (I am told,) at one time, a justice of the marine court during the temporary ascendancy of his party; but with this trifling exception, I cannot learn that he was ever, in the least, indebted to office, either for the profits or the honors in which he has so copiously and deservedly shared.

"In 1812, he was visited by a severe domestic calamity in the death of Mrs. Wells, to whom he had always been very tenderly attached. He remembered her meekness, her kind attentions in adversity—she had shared in his prosperity without ostentation. Her death brought back to his mind associations which awakened his early woes—he was a man, and he mourned the bereavement. But he was a christian, and he bade her adieu with a full persuasion that he should see her again; that she had gone to sleep for awhile, but would shortly awake to happiness forever.

"He was married again in 1816, to Miss Huger, of the city of New York, daughter of Charles Huger, deceased, late of Charleston, (S. C.,) a highly respectable and accomplished lady, who survived him, and still continues to reside with his children at the family mansion.

"His health continued remarkably fine, and almost without intermission, till within three days of his death. On Wednesday evening, the 3d September, 1823, having been actively engaged in business during the day, he returned to his family, complaining of extreme weakness and languor, for which he said it was difficult to account, as he had felt its approach but for a few minutes. He continued in this situation during the two following days, with very little pain, but attended by a rapidly increasing debility. It was not till Saturday, the 6th September, that any fears were entertained of his approaching dissolution, either by himself or his family; and he expired a few minutes after these apprehensions arose, apparently falling asleep as if from mere fatigue or exhaustion.

"Mr. Wells did not aspire to the character of an universal genius, and he undoubtedly selected his fort, or strong ground, when he commenced the study of the law. The foundations of his reputation in this department were, a mind naturally strong and comprehensive, improved by the usual classical studies, a critical acquaintance with English belles lettres, and a

laborious systematic study of the common law, both in its theory and practice. He despised the character of a mere sciolist in his profession, the tame and idle spirit which wanders among glossaries, digests and indices, content with rules and principles in the abstract, without knowing how they ever have been or can be applied. He did not fear the imputation of being a case-lawyer, because he had traced the law to its ancient sources, by looking into and studying the cases themselves, instead of receiving them upon trust, on the authority of Blackstone, Comyn or Bacon. He was a practical refutation of that quackery which holds any strength of mind in a lawyer, however great it may be, a safe substitute for study and authority. Accordingly, his library was early and extensively stored with the books of common law, indiscriminately, as well as those which relate to the three kindred and closely connected branches of international, maritime and commercial law. As a proficient in the latter, he was generally acknowledged to stand unrivalled at our bar. His law books and cases had a decided preference with him, though they by no means excluded the pursuits of various literature. He was pleased with the calls and attention of his friends, but study and business had ripened into a second nature, and so far from being a burthen, he could return to it with zest from the greatest delights of social intercourse. The transition from a state of high enjoyment and glee in the circle of friendship to one of the most profound engagement and abstraction, did not appear to cost him a single regret, or a single effort.

"The cause of his client was always an object of peculiar solicitude. This he never neglected. In addition to the general stock of knowledge which he brought to his aid, it uniformly underwent the most exact and scrupulous examination as to its particular features. No principle, no case bearing upon the subject, which his various knowledge and extensive library afforded, was omitted in the process. The evidence was weighed; the latent defects explored; and his opinions, in cases of doubt and difficulty, were seldom expressed till he had attained the point of certainty as nearly, perhaps, as it could be reached by legal demonstration. His conclusions, thus carefully formed, were sustained by him before the various courts where he practiced with a firmness and boldness which pertained to a consciousness of their accuracy, and a learning eminently calculated to edify and aid the researches of the most enlightened and experienced tribunal. 'He has,' said the late Chancellor Kent, on hearing of his death, 'been pouring instruction over my mind for fifteen years.'

"He was persuaded that the lawyer, though he has prepared his case by laying his premises, and proceeding to a conclusion in his own mind, has performed but the minor part of his duty. The operations of the closet have yet to

withstand the criticisms of some lynx-eyed adversary, and undergo the siftings and canvassings of the bench. Successfully to conduct his official auditors to the same conclusion, to simplify, to elucidate, to demonstrate, to convince, to transfuse his own ideas into the minds of others, to refute the arguments of opposing counsel, animated by convictions perhaps equally strong, and actuated by powers equally commanding, to detect the sophistries, dissipate the obscurities, obviate the doubts, and disentangle the subtleties in which zeal and ingenuity have involved the subject, or to meet all these by anticipation when the order of proceeding will not admit of a reply, was, in the important, intricate, and nicely balanced causes in which Mr. Wells was frequently engaged, and before the courts where he usually appeared, one of the loftiest efforts of human genius. It was on occasions like these, 'when the matter matched his mighty mind,' when his highest powers were truly put in requisition, that he justified the public in the rank which they had assigned him, of the most accomplished lawyer and eloquent pleader in the State.

"In the discharge of his duty as an advocate, he generally avoided anything like an exordium, and endeavored to lead his hearers by the shortest and most distinct route to the real point in controversy. In doing this, he was rarely unsuccessful. The mind was suddenly filled with his subject, stripped of every thing trifling and impertinent, or connected only with such agreeable associations as were calculated to interest his audience and fix their attention. His power of simplifying the most intricate cases has often been admired, and seldom, if ever, excelled. This enabled him to keep in constant view the strong points of his cause. He was a perfect master of the narration; his memory reached all its details; and when interrupted as having maimed or distorted evidence, the explanation which followed generally resulted in the most triumphant accuracy. In the distribution of his subject he was rigidly methodical, and his arrangement appeared to be the most natural and lucid of which it was susceptible. Indeed, he had no wish to perplex, entangle, or mislead; for he would not violate his own clear convictions; and having been cautious to be well persuaded in his own mind that the cause was with his client upon its ultimate merits, his arguments seldom rested on merely technical and formal grounds. If he became satisfied that his adversary could not be annoyed, unless by a professional *ruse de guerre*, operating in derogation of his plain and substantial rights, success in such legal legerdemain had no charms for him, and he either advised a compromise upon equitable principles, or withdrew from the controversy. He uniformly examined the whole range of discussion, and sought such a result as he believed would be reflected by

the mirror of the law in its truth and purity. To this result he adhered with a Spartan firmness, which shewed that he considered its maintenance not only a matter of private but of public duty. Hence he gave no countenance to uncertainty and innovation, by endeavoring to substitute the maxims of a fanciful morality for those of law; though where the legal rule which governed his case was doubtful, no one was better qualified, by a philosophic view of its moral merits, to show which side of the scale should preponderate; and no one was entitled to assume a higher tone upon those questions which have been treated as belonging to the school of imperfect obligation. For,

“Wells was a christian moralist. He had in early life made the doctrine of ethics, as refined and exalted by the promulgation of the gospel, the subject of a thorough investigation. The consequence was a profound sense of its truth and importance. And though he viewed its great and leading doctrines as extremely simple and easily applicable to the ordinary duties of life, he did not believe that one whose profession or extensive connexions in business was continually bringing under his review the conduct of mankind in its greatest variety, should content himself with the knowledge of its rudiments. He, therefore, regarded it as a part of his professional duty, to be well acquainted with the moral code. And if the effect of its doctrines upon his heart, and his practice in all the relations of life were to form the test of its excellence, the scoffs of scepticism would be silenced forever, and the maniac ravings of the atheist regarded as doubly insane. He was a most severe and critical judge of his own conduct. He looked upon religion as intended to regulate our intercourse with one another here, by adding to the ordinary sanctions of temporal morality the rewards and punishments of another life, ‘according to the deeds done in the body.’ His sense of duty was formed upon this foundation, and improved into a habit; so that he presented one of the finest models of everything excellent in private life, and brought with him an astonishing weight of character to the bar. He thought it his duty to make a public profession of religion. Satisfied that the creed and practice of the English Episcopal church were the nearest in accordance with his views, as being the most liberal and enlightened of any which prevailed among the various, though respectable denominations of christians in this country, these circumstances determined his preference. For several years before, and at the time of his death, he was a member of Grace church, in the city of New York. But he was a professor of religion—not a party professor. In relation to all other christians, professing or otherwise, he was mild and tolerant. Amidst bitter railings, sectional accusations, harsh epithets, vindictive jealousies, obstinate diversities of sentiment in matters of trifling mo-

ment, adding fuel to schism and arguments to infidelity, he stood a firm, unshaken example of forbearance, candor and charity. And while he lived the life and maintained the character of a sincere and pious believer, he was humble and unobtrusive in his opinions, content and happy that his ‘serious thoughts should rest in heaven.’

“As some tall cliff that lifts its awful form,
Swells from the vale, and midway leaves the storm,
Though round its breast the rolling clouds are spread,
Eternal sunshine settles on its head.”

“I have noticed the morals of Mr. Wells in this place, because they entered much into his character as an advocate. His language to all others, so far as their religious creed came into question, was precisely that of our constitution. ‘You may be right, and I may be wrong.’ Hence no one could be less assuming, less dogmatical, less the practical sectarian. But this very circumstance rendered his rebuke of every palpable deviation from the plain standards of moral conduct the more awfully stern and severe, and gave double point to those fine strains of moral reasoning sometimes resorted to by him, either with a view to strengthen the legal inference for which he had been contending, or to elicit, explain or rectify a point left in doubt by the obscurity, inaccuracy, or discrepancy of the books, or the total absence of authority. On these occasions he was truly inimitable. While with his own master hand he led you back to the infancy of the common law, traced the various operation of moral causes which gave it birth, and growth, and maturity, and threw a blaze of light over that which had been hidden in the darkness of ages, you almost confounded the advocate with the awful voice of Justice herself, teaching to her own tribunals the first principles upon which her laws should be administered.

“He was an orator of the first order. ‘A man may be called eloquent,’ says Doctor Goldsmith, ‘who transfers the passion or sentiment with which he is moved himself into the breast of another. An intimate persuasion of the truth to be proved, is the sentiment and passion to be transferred; and who effects this, is truly possessed of the talent of eloquence.’ Perhaps no man was ever a more perfect illustration of this definition than Mr. Wells. Having devoted himself to the forum, the talent which he cultivated with the greatest assiduity, and with the most complete success, was that of ratiocination; and there is no doubt that this formed the predominant character of his eloquence. Yet he was seldom uninteresting even in his most ordinary efforts; and he was far from being fettered to the dry details of business-like discussion, when not strictly required by the matter under consideration. Nature had given him all the vehemence, the fire, the mirth, the wit and the pathos which characterize so many of the bar in the country of his European ancestors; but it was the

study of his life to master his native propensity, and make it give place to a substitute ordinarily more useful and efficient in the labors of the forum. He so far succeeded as never to overact, but always measure the exercise of these interesting qualifications strictly by the nature of the subject. Yet though the ground which he trod was that of the philosopher, the lawyer, the logician, he delighted to pluck the flowers which sprang spontaneously in his path, while he trampled with disdain the far-fetched and tawdry exotic. He could laugh out of countenance the foibles and follies of mankind; and meanness, treachery or fraud, touched by his sarcasm, intolerably pointed and severe, started into their naked deformity. Sometimes you might see affectation or hypocrisy writhing under the lash of his irony, and when called to act in the cause of oppressed and suffering humanity, he awoke into the liveliest action all the strings of the soul.

"But his arguments were usually conducted with direct and sober earnestness, and so framed to convince rather than amuse. Sometimes they were terse and condensed; at others full and illustrative; and though he was occasionally pointed and sarcastic, he was commonly gentle and conciliating. His candor and integrity often drew the warmest sentiments of approbation and respect from opposing counsel. In his opening, he proceeded with slow, regular and deliberate movements, occupying as he advanced such strong, distinct, and well fortified positions, directly on the road to his object, as led you along a safe and willing follower, and prepared you at once to echo his conclusion. The whole bore so much the appearance of study, system and preparation, as induced you at times to place his great strength in this department, and to doubt his powers of reply. You were deceived. He could not only seize on the most apposite arguments almost intuitively, and wield and fashion them as circumstances or inclination directed; but he was prompt, skilful, and decisive, in meeting, at every point, the various assaults of adverse ingenuity.

"He had a masterly manner of clothing a long chain of connected ideas in the choicest language. His voice was flexible, under good management, and easily accommodated to the sentiment he was desirous to express; of a fulness and compass which enabled him to discuss a question for a long time, and in the most animated manner, without faltering or hoarseness; and so clear and loud as to render one sitting near him slightly uneasy from the weight and pungency with which it fell upon the ear. It was naturally forcible and commanding; and its softer tones of mild persuasion were evidently the result of cultivation and discipline.

"In his person, Mr. Wells was slightly above the middle size. He bestowed greater attention upon its neatness, and his dress was more

fashionable and better adjusted than is generally deemed consistent with his habits of study and abstraction. His form was erect, solid, firm, well proportioned, and apparently fitted to endure great muscular exertion. His features were regular; and his complexion, which was somewhat lighter than might be expected to accompany his glossy-black hair, his dark eye brows, overshadowing a pair of keen, full and black eyes, was tinged with a glow of good health. Nature had probably thrown into his countenance something which physiognomy would call an air of archness, cunning and subtlety; but this had long since been subdued to the bold open front of honor and integrity. In the excitement of debate, his eye sparkled with peculiar lustre, and his whole countenance beamed with intelligence. Engagements of less importance, or the hour of total relaxation from business changed these appearances only in degree, and superadded a composure, mildness and benignity, which would have led the philosopher or the philanthropist instinctively to have sought him out as a brother.

"Of all men, perhaps, he was the least trained 'to set his looks at variance with his thoughts.' His countenance uniformly proved traitor to the workings of his mind. I am told by a gentleman who was for many years clerk of the circuit and sittings in New York, that he could always discover, through this medium, Mr. Wells' confidence or want of faith in his cause; that, on some dark feature coming out against his client, he would turn to him with a look of suspicion, and demand, in a peremptory under tone, 'Sir, how can you explain this to me?' His high cultivation of the moral sense rendered him a most miserable advocate for a client who failed to satisfy him that he deserved his aid; but this very circumstance imparted to him a zeal, acuteness, and perseverance in the vindication of what he was persuaded to be right, or in the refutation of what he believed to be wrong, which, sustained by his high powers as a lawyer and orator, rendered him as safe an advocate as justice herself could desire.

"His gestures were easy and dignified; his delivery natural, firm and well accented, occupying that happy medium between slowness and impetuosity, which gave to every word its full and distinct pronunciation, and dealt to every sentence its proper measure and emphasis; so that with his perspicuity of arrangement and expression, no speaker could be more easily understood. There was nothing like hesitation, 're-calling or re-casting of sentences as he went along;' but, on the contrary, he was perfect master of his language as well as of his subject; and the occasional grandeur of his peroration showed him no less the towering and sublime, when his subject called for it, than he was, on ordinary occasions, the forcible and argumentative speaker.

"Such is the life, such the death, such the character of Mr. Wells. Perhaps no man in

this country ever reached the same elevation and occupied so large a space in the public eye, upon the mere footing of professional eminence and individual worth. 'Men of talents in the United States,' it is said, 'are generally bred to the bar;' and it is not to be denied that there are many of these who have stood, and who now stand, as high in the public estimation as Mr. Wells; that the influence of their talents and character has been equally benign, and much more extensive, than we are entitled to claim for him; and, consequently, that their reputation filled a wider region. Such, perhaps, were many of those who have departed before him; among whom were a Hamilton, a Parsons, a Dexter, a Pinckney, a Livingston. Yet how far the high offices which these great men held at various periods, and the disposition of the different political parties in which they figured to make the most of their leaders may have entered into the formation of their characters, it is indeed impossible to determine; but it is not dealing unfairly with their memory when we make great allowance for the force of such circumstances. These adventitious causes had no agency in the fortune and character of Mr. Wells. He stood alone—the architect of own greatness. The wreath which he wore was not won in the race of plebian competitors, for he was a master spirit in the ranks of the American bar—the talent and the intellectual enterprize of the republic—noble and generous rivals, who yielded him, with common consent, and with cheerfulness and pride, the honors he had achieved."

The failure of the Liverpool house came upon Mr. Barker by surprise, he not having the least intimation of its approach. On the contrary he was in anticipation of great profits from the business it would be in his power to influence to that establishment.

Subsequently, his friends through his agency purchased and paid for a majority of the stock of the North River Bank, the directors of which, many of whom paid for their stock by borrowing the money of the bank, made a violent war on Mr. Barker; one of them insulted him on the exchange, on which occasion Mr. Barker addressed to him the following letter:

"NEW YORK, *January 29, 1822.*

"SIR: You having, without the least provocation, grossly injured me, you are hereby required to make such reparation as is due from one gentleman to another. The friend that I expected to deliver this being absent for the day, he will call on you to-morrow, or very soon thereafter, for your answer, &c.

"Your obedient servant,

"JACOB BARKER.

"MR. DAVID ROGERS."

The letter, of which the foregoing is a copy, was delivered to Mr. Rogers, on the day of its date, one hour after the insult was offered at the coffee-house; and on the following day, John Wells, esq., on behalf of Mr. Barker, called on Mr. Rogers to know if he would make such explanations as Mr. Barker could, consistently, be satisfied with, offering at the same time to furnish such information as would satisfy Mr. Rogers that he was totally mistaken in the opinions he had expressed; when Mr. Rogers declared his unwillingness to see Mr. Barker on the subject, which being proposed to him, he promptly agreed to see Mr. Rogers in the presence of Mr. Wells and a friend on the part of Mr. Rogers, but objected to seeing him alone; whereupon Mr. Wells wrote the following letter, which was delivered to Mr. Rogers on the evening of its date:

"JANUARY 30, 1822.

"DEAR SIR: I have seen Mr. Barker, who begs that you would name as early a time and place as possible, at which he can see you in presence of myself and a friend on your part, that he may have an opportunity of making the fullest explanation of his affairs. I have a private office in my house, (35 Murray street,) which is entirely to your service, or you may appoint any other place.

"I am, respectfully, your humble servant,
"JOHN WELLS.

"MR. DAVID ROGERS."

On the morning of the 31st January, Mr. Seely called upon Mr. Wells, in behalf of Mr. Rogers, and by his conversation evinced an indisposition to the proposed interview and explanations, and left Mr. Wells, observing that he might hear from him again in the course of one or two days. Nothing further being heard from him on that or the next day, Mr. Wells delivered to Mr. Barker the correspondence, saying, nothing was likely to result from his interference. On the evening of that day Mr. Barker wrote the following note:

"NEW YORK, *February 1, 1822.*

"SIR: Will you be pleased to send me by the bearer, my friend, William H. Allen, a written answer to my note of 29th ultimo.

"Your obedient servant,

"JACOB BARKER.

"MR. DAVID ROGERS."

This letter was delivered by Lieutenant Allen to Mr. Rogers, with the pressing demand of a categorical answer, which was evaded by

the plea that the affair was in the hands of Messrs. Wells and Seely, whereupon Mr. Wells wrote the following letter:

"FEBRUARY 5, 1822.

"When I saw you last week (Thursday) on the subject of Mr. Rogers and Mr. Barker, on leaving me you said that you would see me again in a day or two; not having since heard from you, or seen you, I consider the business at an end as regards my agency in it.

"Very respectfully, your humble servant,
"JOHN WELLS.

"MR. SEELY."

In place of affording the required satisfaction, complaint was made to the grand jury, before whom Mr. Rogers testified that Mr. Barker had challenged him to fight a duel, whereupon they indicted him for such an offence.

Before the case was tried an election for directors of this bank came on; inspectors were appointed to sustain the sitting members; to make sure of this, one of their members resigned and was appointed inspector; the farce of an election was gone through, and the sitting members declared to have been re-elected; these proceedings were set aside by the Supreme Court, which rendered a decree in words following:

"IN SUPREME COURT, August term, 1822.

"*The people of the State of New York, at the relation of Jacob Barker and others,*

"AGAINST

"*Abram B. Mead and others.*

"*Samuel A. Tulcott*, attorney general of the people of the State of New York, moved on Tuesday, the eighth instant, for leave to file an information in the nature of a *quo warranto* against the defendants above named, who claim to be directors of the North River Bank of the city of New York. This motion was founded on a bill in chancery recently filed against the defendants and others, by James D. P. Ogden, Jacob Barker, and others, and on the answers to that bill, and also on an affidavit showing that the relators above named are stockholders in the North River Bank.

"On Friday, Chief Justice SPENCER delivered the opinion of the court, to the following effect:

"These applications being generally found on the *ex parte* affidavit of the relators, it has of late years been usual in the English Court of King's Bench and in this court, to afford the defendant an opportunity of being heard against granting leave to file the information. A rule to show cause is, therefore, generally

entered; and leave is afterwards granted or refused, as circumstances shall appear upon the cause shown. In the present case, the application is for leave to file the information in the first instance. There is no doubt that the court are bound to exercise a reasonable discretion on the subject; and this cause comes before us in a manner so peculiar, that we think it proper to except it from the general rule. The application does not rest upon a mere *ex parte* affidavit. The evidence placed in our hands comes from the defendants themselves, or from a source most favorable to them. We have the sworn answers of the defendants to a bill in chancery, filed in relation to the very election complained of. We have also the answers of the inspectors of that election. Upon a rule to show cause, nothing could be alleged by the defendants against granting leave to file the information which is not already urged on their part, in the papers presented to the court. We have looked into the answers, and we find the defendants and the inspectors admitting a state of facts, which not only render it proper to grant leave as applied for, but which seem to us imperiously to require it at our hands. To give time, under such circumstances, would be an abuse of the discretion vested in this court. We will briefly advert to a part of the case as admitted by the defendants and inspectors. A controversy existed among the stockholders of the bank, a portion of whom were desirous to effect a change in the direction. A few days before the election, a by-law was passed by the board of directors, of which board most of the defendants were members, and then present, authorizing any stockholder to challenge the votes offered at the election; and if supported by affidavits or other probable cause, to the satisfaction of the inspectors, that they might then require the person whose vote should be challenged, to make, on oath, answer to the cause of challenge, the sufficiency of which should be determined by the inspectors; and if such oath was refused, that the vote should be rejected. Under this by-law, votes given upon the proxies of several persons, who appeared, from the books of the bank and the certificates of the cashier, as stockholders to a large amount, were challenged on the ground that the persons in whose names the stock stood, and who held the certificates of the bank, were not the exclusive owners, but that some third person or persons had an equitable interest therein. This was considered by the inspectors as good cause of challenge; and the persons whose proxies were thus objected to, were required, notwithstanding the most urgent remonstrance to the contrary, to make affidavits in writing, in answer to these allegations, and to answer, under an oath prescribed by men who did not themselves act under the solemn obligations of an oath, to various verbal interrogatories, and to submit to a sort of inquisitorial examination at variance with the funda-

mental principles of our civil and political institutions, at the pleasure of the inspectors. In this manner, votes upon a great number of shares were entirely disregarded by the inspectors. It is evident, from the answers, that if all the votes received into the hands of the inspectors, from persons duly authorized to give such votes, had been estimated by the inspectors, that the result would have been different from that declared by the inspectors; as, in such a case, the persons whose seats are now contested could not have been certified to have been elected.

"Without entering any further, at this time, into the facts disclosed, we are unanimously of opinion, that the by-law, and the proceedings under it at the election, were most illegal and reprehensible. The act of incorporation provides, "that each stockholder shall be entitled to one vote on each share of the stock of the bank, which he shall have held in his own name at the last fourteen days previous to the time of the voting."—(*Sess. 44, ch. 146, § 8.*) Further than this the inspectors had no right to inquire, as it was not competent for the directors to pass any by-law at variance with the positive provisions of the act incorporating the bank. We therefore feel ourselves called upon to grant the motion; more especially as the statute contemplates, in cases of this sort, the most speedy and effectual proceedings which a due regard to the rights of parties and the proper administration of justice will permit."

"Leave granted to file the information *instantly*."

The trial of the alleged offence against the duelling law came on, when David Rogers testified, that he had not ever dealt with Mr. Barker; that until the North River Bank affair, their acquaintance was so slight that they did not, in passing, recognise each other; that the remarks he made to Mr. B. on the exchange, of which Mr. B. complained, detailing them, were from information derived from others; that Mr. B. left the room without saying a word; that in an hour thereafter he handed him the letter of the 29th January; that when he received it he considered it a challenge to fight a duel. Mr. Wells called upon him the following day; that he considered him the person alluded to in Mr. B.'s letter; that their negotiations were of a pacific character; that Mr. Seely had, at his request, conferred with Mr. Wells on the subject without any satisfactory result; that he received the letter of Mr. B., of the 1st February, from Lieutenant Wm. H. Allen; that he had testified before the grand jury that he was sorry to have been obliged to state the affair to them, that he told the foreman so at the time.

Mr. Wells, a witness on the part of the prosecution, testified: That on the occasion, Mr. Barker called on him, his feelings appeared to be strongly excited, and detailed the occurrence at the coffee-house; having, in the course of professional duty, had an opportunity of knowing the affairs of defendant for several years, believed that an amicable arrangement might be made if Mr. Barker had an opportunity of explaining his affairs to Mr. Rogers; witness, with Mr. Barker's consent and concurrence, called on Mr. Rogers on the 30th January; had a conversation with him, and requested of him to see Mr. Barker, and hear an explanation of his affairs; and told him that Mr. B. had been injured by what had occurred at the coffee-house; and explained to him his views, saying, that from the character the witness had ever understood that he (R.) sustained, he was led to believe, that if he was convinced that Mr. B. was really injured by any remarks he had made, he would not hesitate to say so, or words to that effect; to which Mr. Rogers assented, or said, certainly, promising to send a friend to confer with him. Mr. Seely called upon witness in behalf of Mr. Rogers; they had some conversation and correspondence, from which no satisfactory result being probable, Mr. B. was notified thereof, and the correspondence delivered to him; that the part he took in the affair was wholly of a pacific nature. Witness added, in reference to the Exchange Bank notes, that from his knowledge of the defendant and his business, the money would be paid for them, if Mr. Barker had it, as freely as the rain had ever fallen from the heavens.

The district attorney called Mr. Halleck and other friends of Mr. Barker, in the expectation of establishing from his confidential conversations what he meant Mr. Rogers should understand from those letters.

M. M. Noah, a witness for the prosecution, stated that defendant had called on him to publish the correspondence, which he had declined.

James Orum, also a witness for the prosecution, stated that he had printed the pamphlet in evidence, at the request of the defendant; but not a word was elicited from any witness, going to show that Mr. Barker had undertaken to interpret his letters as meaning a challenge.

The cause was ably summed up by Thomas Addis Enmit and Josiah Ogden Hoffman,

esqs., on the part of the defendant, and by Messrs. Maxwell, Benner and Price, on the part of the prosecution, and given to the jury, who, on retiring, agreed that a vote should be taken and a verdict rendered "guilty" or "not guilty," according as three-fourths of the twelve jurors should decide; the vote resulting against the defendant the verdict was rendered in accordance therewith.

Mr. Barker asked for a new trial; on the hearing of the motion he appeared without counsel and reviewed the whole case very elaborately, saying that he did not complain so much of the verdict as the manner in which it was agreed upon; that it was subversive of the whole doctrine of jury trial, substituting the will of a portion for that of an unanimous vote.

The recorder remarked, "Had this been proven by legal testimony, we have no hesitation in saying that the objection would be fatal. You brought the declarations of jurors to prove that the jury agreed that if nine of the pannel should unite in a verdict, the other three should fall in and find with them. Such conduct would, undoubtedly, be reprehensible; and this court takes this occasion to say, that nothing would be more alarming than for our jurors to adopt such a method of making their verdicts. You have only the proof which some of the jury themselves gave; and it is a well settled point, that a jurymen cannot be heard to disparage his own verdict."

Mr. Barker responded: "My objections to the conduct of the jury being overruled by your honor, I shall not press that matter further than to say, that when judgment shall be passed, I do hope the irregularity will not escape unnoticed; that there may not, at least, be a recurrence of a practice fraught with such incalculable mischief, and which must impress with awe every member of a community, whose life, honor, liberty, or fortune, may, in its turn, become the sport of chance.

"I will proceed to show that the verdict was not supported by the evidence; the charge of offence against the common law not having been sustained by legal proof, and so ruled by your honor. I shall devote my attention more particularly to the law of the State, which I consider to be unconstitutional, and to some of the remarks of the opposing counsel."

Mr. Barker handled those gentlemen with

great freedom, seeming to consider the threatened disfranchisement but a small penalty for the pleasure of the battle. He insisted that the damages to be awarded were to be measured by the provocation; hence all things relating thereto were fit subjects for enquiry.

He referred to the language of Rogers, as sworn to by himself; his ignorance as to the matter spoken of; his refusal to hear testimony and to make the required explanations; and to the continued injurious course of the directors of the North River Bank, as described by the Supreme Court when they annulled the illegal election.

"The guilty words are, doubtless, 'My friend will call to-morrow;' and on the morrow Mr. Wells did call. How, then, can it be doubted that he was the friend alluded to? Still they insist he was not the man alluded to, and again I ask them, what proof they have of that? Mr. Wells on his examination said, that if Mr. Barker meant that letter as a challenge, and the friend mentioned in it as a second, I could not have meant him, because I never said one word to him about fighting or challenging, or anything more than the desire of an amicable explanation.

"I felt, and do feel, the weight of my obligations to Mr. Wells, and that my whole life would not repay the friendship of such a man; and I most solemnly declare, that I never considered Mr. Wells in any other light than as a peace-maker, and that if I ever had an intention of dealing out justice with my own hand to Mr. Rogers, Mr. Wells was never thought of as a party to such a purpose. He has testified; his life and character speak volumes for the truth of what he utters, and because he says he never heard a word of fighting or of challenging, it must be that I sent some other friend to challenge, and that must be Lieutenant Allen, because I employed him to bear a harmless note, and bring me a written answer. Now, I put it to the court to say, whether this is putting a fair construction on the testimony, or whether it is not the fairer and more rational inference that Mr. Wells was the friend alluded to in my note of the 29th January, and that my only object was of a pacific character.

"In affairs of honor, to be sure, it is a point of honor to keep the secret, and the gentlemen

have said that I have exercised my accustomed sagacity in doing so. I certainly kept the secret, if there was one to be kept, with such marked fidelity, that the gentlemen have not been able to find a human being who had the most distant hint of it, although they spread their net wide indeed, sweeping my friends and associates at random into court, to give evidence touching my conversations; but it was not in their power to extract a word of challenging from all the circle of my friends and acquaintance, with all their diligence, which went so far, that I wonder they had not called upon Mrs. Barker and her daughter, and other inmates of my house to detail the conversation of the tea-table, &c. Therefore, I do think this will be awarded to me, unless it should be believed that there was not any secret to keep; and I confess that is the natural inference, and particularly so as applicable to a person so fond of talking as everybody who knows Jacob Barker knows him to be. This is all well. Let no guilty man escape. I am content. But if the district attorney had been as active in doing his duty against others as he has against me, against whom he has done it nobly indeed, and vigorously, there might have been some other victims to satisfy the law. Certain it is, that others have sent, carried, and accepted challenges, have fought duels, and some have killed their neighbors.

"Mr. Allen was not called upon to testify; perhaps that might be from the apprehension that he might refuse to answer in crimination of himself, in which case, it is true, he would be protected by the law. But the question was asked, who is this William H. Allen? And this question was to make it appear that he was a lieutenant in the navy. I will now inform the gentlemen further, Mr. Allen is a lieutenant in the navy of the United States. He was second officer on board the *Argus*, when the London editors accused her of having set the whole Irish sea on fire; when at Lloyd's insurance could not be made across the Irish channel from Liverpool to Dublin under 10 guineas per cent., notwithstanding the 1,000 British ships of war that covered all the seas; and when his commander and namesake was killed, and his superior officer wounded and taken below, he fought the *Argus* against the *Pelican*, a ship of double her force, for 20

minutes, until the wounds of the first officer were dressed, and he came again on deck, and ordered his flag to be lowered to save the further effusion of blood. The gentlemen now know all about Lieutenant Allen, and if they can use this information to their advantage, they are welcome to it; and I very much doubt if they can give so good an account of themselves during the war.

"If the letter of the 29th January had been a challenge, that of the 1st of February could not have been one, nor could it support the count at common law, which was for sending a challenge by Wm. H. Allen; he is a lieutenant in the navy, that's it, therefore I am guilty; whether he was or was not the friend alluded to in my letter of the 29th, can have no bearing on the question, and especially as it was not proved that he delivered any challenge whatsoever. But the first letter, they say, was the challenge, and the friend intended in that letter was Lieutenant Allen.

"The district attorney opened this cause by saying, that I had offended against the laws of God and man; that I had a family; that I owed something to the community; and for that should be made to suffer; and some spoke of my wife and children, and therefore that I should answer to the community. It was the first time I had heard of a man's being punished for having a wife and children, though I had often heard it urged in mitigation of his sentence. I have, it is true, a wife, whose bosom is replete with every virtue that dignifies the human character, and I have nine lovely children, just bursting upon the world in pursuit of honor, fame, and happiness; and may my heart cease to palpitate when it ceases to feel for them. My honor is their honor; and may my tongue cease to articulate, and my arm be unnerved, when they cease to vindicate the honor of such a family as God has given me to watch over and protect. But I do not come to ask for them the sympathy of this court, nor do I know why they have been mentioned in this cause. I equally disclaim being held guilty or innocent the more or the less because I have a family. Not one of my family, whilst one drop of their parent's blood thrills through their veins, would stoop to accept, much less solicit, men's compassion. Fallen as our fortunes are, our spirits remain unbroken. I cannot, per-

haps prevent their mourning over my misfortunes, but I can assure them that they never shall have just cause to blush at any action of my life. They may regret that my enterprises have not been crowned with more success, but they shall never have cause to be ashamed of me. It is true, also, that I owe much to the community, a part of which is to oppose my feeble voice against all attempts to invade its laws and constitution—that debt I am at this moment paying to the very best of my abilities.

“I have been charged with ambition, and I acknowledge the weaknesses that belong to frail man. My greatest ambition is to hold fast by my rights, and on all occasions to defend them. Of the fame of having sent a challenge I am not, certainly, ambitious. No man holds a professed duelist in more contempt than I do. I wish it were not necessary, or held so in any case, not even in that most cogent of all exigencies, the vindication of a lady’s honor. But public opinion has willed it otherwise, and I cannot help it, as I do not make public opinion, however much I may be under the painful necessity of yielding to it, we are all slaves.

“The district attorney affected to consider this case as one of small importance. Had he been cradled in democracy he would have different opinions; and had he reflected that he received his office from the hands of men who consider the right of suffrage to be of vital importance, he would not have betrayed his monarchical sentiments.

“For what has so much blood and treasure been lavished to secure our independence, and recently to protect it? For what were the glorious battles of New Orleans, of Erie, of Champlain, of Bridgewater, and so many others fought? For what has so much blood been spilt in South America, and Europe, but to secure and protect the rights of self-government? To urge this further would be as idle as to attempt to illuminate the sun. So important do I consider the right to hold an office, civil or military, that, were I possessed of the Indies, or the mines of Peru, I would have sacrificed the whole for the honor of commanding in the armies of my country, and in her defence, on such an occasion as that when the modern Vandals entered Washington, where I witnessed the flight of thousands from the enemy, without their drawing a trigger in defence of the

capital of the nation, intrusted to their protection. Had I commanded on that day, I too, might have retired in that way, as no man knows until he is tried. I, however, do think I should not have done so until I had seen human blood, and that might have overcome my nerves. Would it be nothing to have been put in a situation to punish that insolent aggression? to be immortalised as were the leaders of our troops at the battle of Bridgewater, and the sortie from Fort Erie? Is it nothing to be eligible to such employment? Is that of no importance to a man who professes and acknowledges himself to be ambitious of every honorable distinction that a free people can confer upon him.

“One of the counsel thought I deserved to be convicted for not having come out in the public prints and denied all intention to challenge Mr. Rogers, that he might have been spared the scoffs, and sneers, and ridicule of the world, and that the boys and girls, the young, the middle aged, and the old, might not consider him as an object placed through life ‘for the hand of scorn to point its slow unerring finger at.’

“And did he think his employer entitled to this kindness from me after he had heard his evidence? I cannot bring my mind to agree that such was my duty. He also laid much stress on my not having seriously denied the report to my friends when they stated it to me. Certainly he had no solid ground for a conviction, or he would not have seized, with such avidity, on so flimsy a pretext.

“I shall now examine the circumstances of aggravated provocation under which I was placed. This cannot but be a fit subject of inquiry, if the penalty be in the discretion of the court.

“Your honors will recollect the time, place, and extent of the insult offered to me. A doubt was attempted to be raised, indeed, whether I was under any necessity of considering the expressions used, as applicable to me. But when my identity with the Exchange Bank, and the Bank of Washington, and Warren is considered, and that the management of these banks was the immediate subject of conversation, no one can blame me for understanding what it was intended the dullest should not mistake. It is trifling with justice to say the

cap fitted, and I put it on. I had besides, in my pocket, at that time, an anonymous letter, which had been sent to my father-in-law, through the post office, full of the same calumny, applied to me by name. (Here the defendant produced a letter, but the reading of it was objected to, and he withdrew it.) Many of my friends have received similar letters, which we believed to have proceeded from the same source. And was I tamely to submit to these gross wrongs? Was I to hear all and to say nothing? And when I sent an honorable friend to demand some explanation, must I be punished? And, if considered culpable, will all this provocation go for nothing? Was my domestic peace to be invaded with impunity? Was my aged father-in-law, in the evening of his life, to be harassed and disturbed on my account? Were these attempts to interrupt the confidence and affection of my own family to be repeated by these men, and I not allowed to use my feeble voice, my pen, my skill, nor to make any effort in defence of all that renders life desirable, or even supportable? Forbid it, my fellow citizens! forbid it, this honorable court! forbid it, Heaven!

"The only thing said by Rogers which can have any legal bearing on the case, was, that he gravely insulted me at the coffee-house; that my letter of the 29th was delivered to him by myself, one hour after the insult, and at the distance of one mile from the place where the insult was given; that Mr. Wells called on him the day following the date of that letter; that he considered Mr. Wells the friend alluded to therein; that Mr. Wells' conversation was entirely of a pacific character, and that my letter of the 1st of February was delivered to him by Lientenant Allen. This, considering that I had to write a letter, look for a friend, find him out of town, write another letter, and seek him at so great a distance, was tolerably prompt; perhaps not so much so as the insult merited.

"The gentlemen have accused me of too much confidence. I have always felt great confidence in the positions I supported, and I have seen no cause to change my opinions; and if I have succeeded in expressing the extent of the confidence I feel, I have at least been successful in one thing.

"One of the grounds they urge for my conviction, is my want of gravity. A very slight ground for conviction this. I do not know how

to be very grave; it is not in my nature to be so; and even under the accumulation of injury done me, I cannot but smile at their desperation every time I think of their pretended election for directors of the North River Bank the present week, by which I have been greatly injured in a pecuniary point of view. Yet I cannot be grave when talking to my friends on the subject. From this censure I wish to exempt Mr. Jay. I consider him a gentleman, and a man of honor. He was not at the board when the illegal by-law was passed; and when he heard how things were going on, he went over to the bank to regain his proxy; it having been used early in the morning, he was unfortunately too late.

"They think I ought not to succeed, because the learned gentlemen who honored me with their aid on a former occasion did not urge at the trial the objections I have urged, and because they are not now by my side, supporting with their legal reputation and eloquence those principles for which I contend with so much zeal and confidence. They say, that if they had not totally objected to risk their legal reputation in so desperate a cause, I should have had them here on this occasion, as I possess abundance of means of paying them. Now, in all this they are totally mistaken. I am not able to pay them, and I could not consent to tax their liberality further, by putting in requisition such transcendent talents, which they are now exerting in another part of this house, and for which they will receive that pecuniary compensation they so richly merit, and which, being their profession, is their dependence for the support and fortune of their families; and I will not disguise that I felt competent to the task I have undertaken. I have not paid them one cent for the very able assistance they rendered me on the trial; but I had on former occasions, when fortune smiled more kindly on me, employed them and paid them too, and they, true to their well known characters, did not hesitate to come forward in aid of an old friend, without stopping to inquire whether they would be paid or not; and so far from their doubting the soundness of the objections I have urged, one of them, Mr. Hoffman, told me that there could be no question as to the point of law; it was assuredly with me; the duelling act, said he, being abrogated by the

new constitution. And I understood Mr. Emmet to express the same opinion; but I do not advance that with the same confidence, because my conversation with him was more general.

"There can be no question but what the test oath was unconstitutional, and that it was abrogated by the new constitution; the gentlemen say that the latter did not take effect until December next; everything relating to the franchise of the citizen took effect in March last, and I insist that disqualifying an individual from holding office under the State relates directly to his franchise; they also insist that the test oath only was abrogated, and not the whole law; I insist that when the vital part of any law is abolished the whole falls.

"I have a book in my hand which shows that where a bond is void in part it is void in whole, and so of conveyances, which are against the provisions of a statute; and I think it reasonable that if a part of a statute is bad, being against the provisions of the constitution, the like principle should govern, as in the case of a bond or conveyance made against a statute. In 14 Johnson's reports, 465, I find this passage:

"It appears to be an established rule, that where a bond is void in part, as against the positive provisions of a statute, the whole bond is void. This distinction was taken in the case of *Norton vs. Simmons*, (Hob. 14,) between a bond made void by the statute and by the common law; for upon the statute 23 Hen. VI, if a sheriff will take a bond for a point against that law, and also for a due debt, the whole is void, for the letter of the statute is so, for a statute is a strict law; but the common law doth divide according to common reason, and having made that void which was against reason, lets the rest stand, as in 14 Hen. VIII, fol. 15. It is mentioned also, as a saying of Lord Hobart, that the statute is like a tyrant, where he comes he makes all void; but the common law is like a nursing father, and makes void only that part where the fault is, and preserves the rest."

"To enable the court to decide whether the statute be made in the spirit of the constitution, or against it, it will be necessary to know its true character; and to ascertain this, we must look into its origin, birth, or first being.

"When before this honorable court, on a former occasion, I read the journals of the Senate, showing the law to be founded upon a petition from the Rev. Dr. Milledoller, and several other reverend gentlemen, one of whom, if not more, devoted at least a month to travelling through

the State to collect signatures to the said petition. In respect for these reverend men, I will not yield to any one. I visit their churches; I listen to their eloquence from the pulpit with attention; I hear them expound the divine law with delight; I hear them exhort their fellow beings to forsake their sins and become the disciples of Christ with pleasing emotions, which I lack words to express; and when they crave before the throne of grace omnipotent protection and forgiveness, my heart is filled with reverence, and with them I crave from on high divine illumination. But when I see them overleap their prescribed bounds by meddling with our political institutions, I turn from them with alarm and concern. And if I shall here be enabled to demonstrate to the satisfaction of this court the true character of this law, I think it will prove a wholesome admonition to these reverend gentlemen to confine their future labors to softening the heart and convincing the understanding."

Mr. Barker insists that if the law has not been abrogated, it is unconstitutional; he opposed it on that ground as a member of the Senatorial Committee, again in the Senate, from which body the bill went to the council of revision, where, after a sharp conflict, it was sustained by a vote of four to three.

"Chancellor Kent delivered a very able opinion in opposition, and when the subject was brought before the convention Mr. Jay observed 'that he had originally introduced this law; that he drafted the law; and, though it was altered in its passage through the House, he voted for it. It went to the council of revision, which was said to be divided. But I feel ready to confess that if I had seen the objections to it presented by the honorable the chancellor, I should not have voted for it; and I am ready, therefore, to assent to the repeal of the law on those grounds.'

"The court will please to remark what Mr. Jay considered the question to be. 'I will' said he 'vote for the repeal of the law'—not the test oath, but the law. Chief Justice Spencer considered the case originally unconstitutional, and proposed an amendment; but the convention, being bent on their purpose, were not to be diverted from abolishing the whole law; they rejected the amendment 74 to 45.

"The legislature are competent to impose any degree of punishment, provided they do not infringe the franchise of the citizen; this they cannot constitutionally do but for what the law denominates an infamous crime; and the offence under consideration is at most but a misdemeanor. So far as they condemned me, under the common law, their doings are a nullity—they having done so without evidence."

Mr. Barker failed to convince the court that the law of the State was unconstitutional, or that the abrogation of a portion of it had the effect of abrogating the whole. The court said, among other things, that it was unanimously of the opinion that it would not be just to inflict the penalty of both laws.

"As at common law, we shall not consider the verdict, for, in the first place, we on the trial considered only the statuteable offence. The proof not having sustained the count at common law, we put it to the jury only as an offence against the statute, though they found a general verdict against you. Should we go further now, it would be inflicting a double punishment, and contrary to the testimony in the cause.

"As to the ground, that the jury found a verdict against you on chance, you brought the declarations of jurors to prove that the jury agreed, if nine of the panel should unite in a verdict, the other three should fall in and find with them. Such conduct would undoubtedly be reprehensible; and this court takes this occasion to say, that nothing would be more alarming than for our juries to adopt any other method of making their verdicts than the true merits according to the evidence."

The recorder illustrated this opinion with some feeling, and stated impressive cases which might occur if there should be a recurrence of such a practice, and continued:

"We have no hesitation to say that that objection would be fatal if established by legal evidence; but you have only the proof which some of the jury themselves gave; and it is a well settled point that a jurymen cannot be heard to disparage his own verdict.

"The defendant's points have all failed him; the sentence of the court, therefore, is 'That you be incapable of holding, or being elected to, any post of profit, trust, or emolument, civil or military, under this State.'"

These disabilities were all removed, and Mr.

Barker restored to all the rights of a citizen, by Governor Clinton.

The New York city press was generally subservient to the monied aristocracy; and it rarely happened that a sufficient moral courage was found among individuals to take part in resisting the storm which was raging against Mr. B. The character of this hesitation may be gathered from the following letter:

"MARCH 6, 1822.

"SIR: We have been called upon this afternoon by a number of gentlemen regarding the documents of which your advertisement is composed, who, upon hearing their contents, have given us to understand that, if published, they will involve us in difficulty with many of our patrons and friends.

"Not feeling willing to encounter this disturbed state of feeling, we are under the necessity of declining the insertion of the advertisement.

"We are, with respect, your obedient servants,
"DWIGHT, TOWNSEND & WALKER.
"JACOB BARKER, esq."

Very soon after this occurrence, Mr. Barker was called upon to mourn the untimely death of his friend, Lieutenant William H. Allen.

"Lieutenant William Howard Allen, whose enviable reputation is the common property of the nation, was born in the city of Hudson, on the 8th of July, 1790.

"He possessed strong and vigorous intellectual powers, and he mastered the sciences with ease and laid a solid foundation for future usefulness. He always availed himself of every opportunity that offered for distinguishing himself, and as occasion required he evinced both skill and courage. He was appointed a midshipman in 1808, and served on the gun boats, ships Chesapeake and United States. In 1811 he obtained a furlough, and made a voyage to Archangel in command of the ship Rodman. On the approach of war he returned to the United States service; was promoted to the second lieutenantancy in 1812, when he entered on board of the Argus. Her cruise continued prosperous until she came in conflict with the British sloop-of-war Pelican. Although this vessel was superior to her in burden, men and metal, yet the battle was long, severe and bloody. Early in the action, Captain William Henry Allen was mortally wounded and carried below: shortly after, the first lieutenant, William H. Watson, was severely wounded, and taken to the wardroom. The command of the Argus then devolved on Lieutenant William Howard Allen; his conduct was cool, deliberate, and such as received the admiration of the crew, and the approbation and praise of his superior officers. After fighting was useless, the Argus was surrendered to the Pelican a perfect wreck. This was on the thirteenth

of August, 1813. Lieutenant Allen was taken to Ashburton, England, where he was detained eighteen months a prisoner of war. In 1817, he was promoted to a first lieutenancy, and served on frigates United States, Independence, Columbus, and Congress. He sailed as first lieutenant of the latter in 1819 to the China seas. She returned in 1821, and he was appointed to the command of the Alligator, in 1822. Sailed from New York on the 3d of August of that year, on a cruise against the pirates, in which he plucked a wreath of glory, but the shaft of death was in it.

"On his arrival at Havana, he was informed that a gang of pirates, having in possession some merchant vessels, had stationed themselves in the bay of Le Juapo, in the neighborhood of Matanzas; without coming to an anchor, he immediately proceeded in search of them. He approached the place, saw the pirate vessels, three in number, well armed and supplied, and manned with a hundred or more of these desperadoes, with the bloody flag waving aloft and nailed to the mast. In possession of these outlaws were five merchantmen and several American citizens; this property and these citizens the gallant Allen determined to rescue. The Alligator, in consequence of the shoalness of the water, could not approach them; he ordered the boats to be manned with about thirty of his crew; put himself in the van and led the attack and boarded them. The outlaws resisted, but were driven from their flag vessel, of which he took possession. They fled to the other vessels, he pursued them amidst a shower of musketry; a musket ball struck him in the head, still he pressed forward, cheering his men, and when about to board them, another pierced his breast; this was mortal; still he cheered his gallant little crew as they lifted him on board of the prize schooner, and laid him on the deck he had so dearly won, and he died of his wounds about three hours after. He called his officers about him, gave directions respecting the prizes, for the merchant vessels had been rescued; conversed freely and cheerfully; hoped that his friends and his country would be satisfied that he had fought well. He said he died in peace with the world and looked for his reward in the next. Although his pain, from the nature of his wounds, was excruciating, yet he did not complain, but died like a martyr, without a sigh or a groan, and the spirit of a braver man never entered the unseen world. The body of the martyred Allen was conveyed to Matanzas, in Cuba, where it was interred on the 11th November, 1822, with the honors due to his distinguished merit.

"Soon after the reception of this sad intelligence at Hudson, which cast a gloom over the city, the citizens of Hudson assembled at the city hall, and it was a more numerous meeting than had ever been witnessed in that city. This was on the fifth of December, 1822, and

on motion of Elisha Williams, the honorable Alexander Coffin was called to the chair; and on motion of Ambrose L. Jordan, esq., Dr. Samuel White was appointed secretary. The Reverend B. F. Stanton opened the meeting with an appropriate and impressive prayer. The Hon. James Strong then pronounced a splendid eulogy on the character of the late gallant Lieutenant William Howard Allen.

"The common council of the city of Hudson requested of the Navy Department to have the remains of Lieutenant Allen brought from Matanzas to New York in a public vessel. This request was promptly acceded to by the Secretary of the Navy, and on the fifteenth of December, 1827, the schooner Grampus arrived at New York, having on board the remains of the lamented hero. On the reception of this intelligence, the common council of the city of Hudson deputed Mr. Reed, former mayor of this city, and Mr. Edmonds, the recorder, to receive and bring them to his native city. On the Wednesday following, they were removed from the navy-yard at Brooklyn, under the escort of the marine corps of that station, and accompanied by Commodore Chauncey and a numerous body of naval officers. The colors at the yard, and at New York, were at half-mast, and the procession landed at New York amid the firing of a salute from the Grampus, which had been moored in the stream for that purpose. At New York the procession was joined by the common council of that city, and an immense concourse of citizens and officers, and moved across the city to the steamboat which carried them to Hudson. There a salute was fired by a detachment of artillery, and by the marine corps, and the remains were delivered by Commodore Chauncey to the Hudson deputation. His remains were accompanied to Hudson by the following officers of the navy: Lieutenants Francis H. Gregory, George N. Hollins, William D. Newman, John R. Coxe, John Swartwout and Alexander M. Mull; sailing master Bloodgood; and midshipmen Lynch, Nichols, Schermerhorn, Lawrence, and Pinckney, and arrived early on Thursday morning. They were welcomed by a national salute, and were escorted to the dwelling of Captain Alexander Coffin, the patriotic kinsman of the lamented hero, by a detachment of military and a numerous escort of citizens, which moved in the following order:

"Hudson City Guards.

"Columbia Plaids.

"Athens Lafayette Guards.

"And the military under the command of Col. William A. Dean, with standards furled and drums muffled.

"The Reverend Clergy.

"The Corpse,

"Borne by Lieutenants Gregory, Hollins, Newman, Coxe, Swartwout and Mull, and Midshipmen Lynch and Nichols.

"Mourners, including Messrs. Bloodgood, Schermerhorn, Lawrence and Puckney of the United States navy.

"Hudson Military Association.

"Brigadier General Whiting and his suite.

"The Mayor and Recorder.

"Aldermen.

"Assistant Aldermen.

"Clerk and Marshall of the city.

"Clerk and Sheriff of the county.

"Committee of Arrangements.

"Followed by a larger and more respectable procession of citizens than had, for many years, been witnessed in that city. While the procession moved, the bells of the city were tolled, and minute guns were fired from parade bill. On its arrival at the grave yard, the body was conveyed in front of the line of the military resting on arms reversed, and was committed to the earth, near the grave of Lieutenant Allen's mother. The funeral service was read by the Rev. Mr. Stebbins, and a volley fired over the grave by the military. The procession then returned to the United States hotel, where it was dismissed.

"At three o'clock, p. m., the naval officers sat down to a public dinner, given them by the citizens, at which about one hundred of the most respectable citizens were present.

"The evening was spent at the hospitable mansion of Col. Livingston. On Friday, the officers paid their respects to the mayor, and departed amid the roar of cannon, with the heartfelt gratitude of the whole city for their generous attention on this occasion.

"The following correspondence passed between the officers of the navy and the committee:

"HUDSON, December 21, 1827.

"The officers of the navy assembled on the present melancholy occasion, reciprocating the sentiments expressed by the citizens of Hudson, return their thanks for the unparalleled tribute paid to the memory of their late gallant associate. They at the same time return their acknowledgments for the liberal hospitality which has characterized the whole proceeding; and, in departing, beg leave to say, that whether applied to the individual or professional standing of their departed member, the conduct of the citizens is alike honorable to their feelings and principles as men and patriots. Laboring under emotions too powerful to be conveyed in adequate language, they tender the committee a grateful and affectionate farewell."

"HUDSON, December 21, 1827.

"The committee of the citizens of Hudson, in acknowledging the favor of the officers of the navy, assembled on this occasion of paying the last honors to the memory of the lamented ALLEN, gladly avail themselves of this opportunity to assure those gentlemen of the high sense entertained by this whole community of the obligation conferred upon them,

by the attendance of individuals deservedly distinguished for their public and private worth; as the committee cannot entertain a doubt that the lives of those officers of the navy will be as honorable, so they cannot help but hope that their deaths will be as glorious, and their memories as much respected, as those of the gallant and unfortunate William Howard Allen.

"By order of the committee.

"DAVID WEST, *Chairman*.

"WILLIAM A. DEAN, *Secretary*."

The citizens of Hudson, who have always been distinguished for their liberality and patriotism, erected in 1833 a splendid monument to his memory.

Thus ended the career of one whose merits as a citizen, son, brother, friend and officer, have never been excelled and rarely equalled.

Before the trial of the indictment, he sailed in command of the United States vessel of war *Alligator*, in pursuit of the pirates, who then infected the West Indies, and was killed in 1822 by a shot from a piratical boat when pursuing them at the head of his boats' crew, inside a reef on which there was not sufficient water for the *Alligator* to pass.

The following lines, from the pen of Halleck, commemorate his lamented fate:

"He hath been mourned as brave men mourn the brave,

And wept as nations weep their cherished dead,
With bitter, but proud tears, and o'er his head
The eternal flowers whose root is in the grave,
The flowers of fame, are beautiful and green;
And by his grave's side pilgrim feet have been,
And blessings, pure as men to martyrs give,
Have there been breathed by those who died to save.

—Pride of his country's banded chivalry,
His fame their hope, his name their battle cry;
He lived as mothers wish their sons to live,
He died as fathers wish their sons to die.
If on the grief-worn cheek the hues of bliss,
Which fade when all we love is in the tomb,
Could ever know on earth a second bloom,
The memory of a gallant death like his
Would call them into being—but the few,
Who as their friend, their brother, or their son,
His kind, warm heart and gentle spirit knew,
Had long lived, hoped, and feared for him alone;
His voice their morning music, and his eye
The only starlight of their evening sky,
Till even the sun of happiness seemed dim,
And life's best joys were sorrows but with him;
And when—the burning bullet in his breast,
He dropped, like summer fruit from off the bough,
There was one heart that knew and loved him best—

It was a mother's—and is broken now."

The hostility to Mr. Barker's onward course was continued, he being always ready to meet his opponents in any field they might select for

battle. Continuing to operate largely in Wall street until the failure of the Life and Fire Insurance Company, and many other incorporations, in 1826; when Hugh Maxwell, the district attorney, endeavored to get him included with the managers of these companies in an indictment, against whom the grand jury found bills; he was not successful; they refused to include Mr. Barker therein.

The district attorney refused to bring the persons indicted to a trial until another grand jury was formed, in the hope that they could be induced to include Mr. Barker; in this he was successful, they did so.

The trial came on, Mr. Barker relying on the integrity of his cause and his own capacity to establish his freedom from offence, declined the aid of his professional friends, conducting the defence himself, until near the close of the first trial.

The testimony of the prosecution closed a day sooner than was anticipated, when the court called on the counsel to commence their defence; it was two o'clock, they asked until next morning to look over their notes, consult with each other, and arrange the order in which they would speak; the court refused, saying they must commence at four o'clock, when Thomas J. Oakley, esq., counsel for Mark Spencer, said "perhaps Mr. Barker will be willing to make his defence this afternoon?" Mr. Barker replied, "certainly," "yes," said Mr. Emmet, who was counsel for Mr. Eckford, "if they were all to be hanged, Mr. Barker would say hang me first;" the court adjourned, and met again at four o'clock, when Mr. Barker spoke thus:

"Gentlemen of the Jury: The importance of this subject makes some apology necessary from me before I take up your time in showing you how to attain a right understanding of its various details. What is it for which I come here? Do I not come to advocate the cause of the father; the cause of you, gentleman of the jury, of your wives and children, of this honourable court and their children; the cause of the mother and the cause of a family heretofore happy and prosperous? But not for these purposes alone appear I before you. I advocate the cause of public justice, no less than the most powerful affections of human life. The sorrow this trial inflicts upon many innocent persons is of the deepest kind. It is from you, gentlemen, that I confidently expect and hope for aid to wipe away those stains. But the number that will read an account of the redeeming qualities of this trial are few in com-

parison with those who have listened to the slanders or believed the calumnies. For myself, I am willing to receive all the consequences for the privilege of putting before the world proof of my innocence, but I feel for others.

"The subject of finance is one of great magnitude and mystery; few understand it. I flatter myself that I have some experience on the subject, and it is on that account I am unwilling to trust to counsel. I am well aware that I am surrounded by great talents, greater than I have any pretensions to. To the whole bar I owe an apology for appearing here in my own person, to do for myself what all the world have told me they could do so much better for me—they will excuse me, for they know I do not intend any disrespect for them. They know the high estimation in which I hold their learning, their logic, their eloquence, and their justice; and that venerable patriot, the pride and glory of two nations, knows how I love him, and how the story of his love of liberty warmed and swelled my bosom in boyhood, how I greeted him welcome when, flying from prejudice and persecution, he first landed on this sacred spot, and how constant I have been in my attachment to him ever since. With all this I have no fears of kindling unkind feelings with those who love the law, and whose practice is to make manifest the excellence of that which merits their love.

"I come here under many disadvantages. The odds are fearfully against me. I said that this business was very difficult to understand, and had many conflicting interests. I dare not trust that I can separate them with sufficient clearness, but I will try; and, gentlemen, I rely on your intelligence to separate these conflicting interests. The past has been a great season of excitement among the dealers in stock, bonds, bank notes, &c. In all these difficulties I have more or less mixed—in the financial concerns of this city I generally have had a hand. It has been made manifest after fourteen days' investigation before you, in which I have stood here before my accusers, boldly bidding them to tell all they knew, that not a hem of my garment has been touched. I complain that I do not come here upon equal terms with any other man. Public prejudice has been excited against me. The newspapers long since called upon the grand jury to indict Jacob Barker—his door has been chalked—he has been called a rogue—every species of reproach has been heaped upon him. During that time Jacob Barker pursued the even tenor of his way. Witness after witness had been examined, and that grand jury was dismissed without finding a bill of indictment against me. Hand-bills continued to be published—poems have been written—and all against Jacob Barker, stating that all was not unravelled. It was published that this and that institution had failed, the funds of which had all disappeared; all this had been laid at my door, and a second

grand jury indicted me. The moment I heard of the indictment, I was ready and anxious for trial. I wanted no books; no preparation; I was willing to submit the cause, after all that could be brought up, to a candid jury, but was pressed on all sides not to go to trial. My friends told me that I could not get an impartial one. I was sorry to hear this, and I did not believe it. I knew it was the court and jury that had to try me, and I considered it impossible but that I should have a fair trial, and therefore demanded it forthwith. You have heard it said in this court, that an acquittal by you would do Jacob Barker no good. I know better, and I will convince you by the zeal, the ardour, the pertinacity with which I shall plead before you, that I place a high value on what the district attorney has dared to say would do me no good from such men as you. I knew your verdict would be valuable, and I asked it as such.

"Gentlemen, I come here armed with justice, and confident in the wisdom and integrity of my conduct, I come here to clear myself from the imputations that have so falsely been made against me. I have brought with me these four boys. (Here he pointed to four promising young men, a part of those twelve children to whom he alluded when speaking of the "beardless boy" who had been sent by the conspirators on his oath to insult their father.) I have brought them here that they may learn a useful lesson—that they may see the excellence of the motto I have from their infancy endeavored to impress on their young minds. 'Be just and fear not'—that they may feel, in listening to my vindication, the force of truth and justice over calumny and fraud—and that they may know that they have not had, and will never have cause to blush hereafter when they speak of their father's memory, or hear their father's name. To do myself justice is a great object, to do my children justice, a greater.

"In his opening speech the district attorney promised me a fair trial. The idea of such a promise—of being promised a fair trial shocked me to the quick. What, is the trial to be given by the district attorney? is its impartiality or fairness left to him? No, gentlemen, it is not so. It is the judge on that bench, and the jury on these chairs, and not the district attorney, that can give me a fair trial. I am to be adjudged by you on the evidence that is produced and will be produced. But how dare the district attorney name such a thing to a free citizen? Let your verdict, whether of guilt or innocence, be delivered on the evidence under your oaths, and who shall gainsay it?

"Gentlemen, I was very unexpectedly called upon by counsel for the other defendants, after I came into court this morning, to make an opening, which was the first intimation that it was their intention for me to lead the van, and as I always keep my powder dry, I make no complaint about being surprised into premature

battle. I live in the country, or I should have heard the alarm gun last evening, and made a little preparation; not having done so, I hope my deficiencies will be forgiven. So far as the trial has proceeded I have reason, thank God, to be satisfied. I have no brief, and have taken no notes.

"The different classes of witnesses are very numerous, and their testimony is mixed up in such a manner as will make it very difficult to be understood. There are the broker and usurer—there are the debtors to the company, and those who have failed to acquire fame in the management of the business of finance, all warring with each other, and at the same time warring against me, and combining together for my destruction; the idea is shocking to them, that amid the disasters, the wide-spread ruin which has desolated so many of our monied institutions, the affairs of the companies which have, in a considerable degree, been intrusted to my management, should have been so ably, so prudently, and so successfully managed, as to be preserved not only whole and sound, but their dividends not curtailed. The debtors of the Life and Fire Insurance Company, whose want of punctuality has been the sole cause of the failure, now wish to take advantage of the ruin their own bad faith has occasioned, and to purchase up the bonds for a mere song, and pay them back to the company at par; and to effect this they cry 'fraud,' 'fraud,' against me, in the hope of invalidating the transfer of the securities to me. The bond-holders are mortified that I should have got my pay when they did not, and therefor unite in the cry of 'fraud, fraud,' in the hope of getting an equal distribution of the assets of the company; forgetting that they got 30, 40, and 50 per cent. per annum for their money, and that mine was lent without interest, commission, discount, or usury, unaccompanied by any circumstance to cloud or mar the purity of the transaction.

"The stockholders unite in the cry of 'fraud' against all parties, in the hope of dividing all the effects of the company, and defrauding all the creditors of a participation therein, although the present effects of the company are almost exclusively the offspring, the fruits, the avails, of the bonds out, or the bonds for which those out were given in renewal. This, gentlemen of the jury, is the first time it has been pretended that partners in trade—and stockholders in an incorporation cannot be considered in any other light—it is, I say, the first time that partners in trade have avowed an intention to divide all the effects of the partnership among themselves, without paying a single debt of the firm—the records of the courts of all the world do not furnish a single instance of such an enormity; and yet I am now on my trial for a fraud against these virtuous stockholders, for the single reason that I am now an obstacle to the consummation of their iniquitous schemes. A great

portion of the securities I received came to my hands before I lent the money—why should this prejudice them against me? Industry, prudence, and talent, will succeed in any business—and after lending so much money to save the company from suspending its payments, and thereby protecting the stockholder and bondholder from loss, they arm against me because I could not advance more money for their exclusive benefit. With another difficulty I have to contend. Ancient prejudices are revived and brought here, and combined with the recent occurrences, for the purpose of destroying me—prejudices, growing out of misfortunes, occasioned by circumstances over which I had no control—misfortunes I have been struggling to surmount, as I would for the preservation of the apple of my eye; and I hope to satisfy all of the purity of my intentions. I admit the very great prejudice against me by the monied aristocracy of Wall street, and that it is widely branched out, inasmuch that the very air of this hall has been filled with accusations of guilt against me. But this is a day of revolutions; and I publicly pledged myself, at the commencement of this trial, to make a most thorough and perfect revolution in the public opinion in relation to Jacob Barker's guilt, and I think I have done so. I love the world, and if I could make the world love me, I should be happy. With the mechanic, the cartman, the laborer, the men who live by the sweat of their brow, and, consequently, who think honestly on all subjects—with this most meritorious portion of our citizens, no such general prejudice exists against Jacob Barker. With these, it is the pride and delight of his heart to stand well; and of their friendship and confidence, I assert, without the fear of contradiction, no individual possesses a larger share.

"Gentlemen, it has been asked over and over again, why has Jacob Barker been indicted? In vain have I listened and looked for a justifiable cause. I give you my honor that I am yet ignorant, and therefore am obliged to fight in the dark. Imagine for what it is that you are to be required to convict me—you have heard the district attorney more than once tell me he would let me know, when he comes to sum up the case. Observe, gentlemen, when he comes to sum up: then I shall be bound hand and foot, muffled and gagged; then the rules of the court will not permit me to call a single witness, or to say a single word in explanation or vindication of what he may then be graciously pleased to say to my prejudice. It is then, and not till then, that I am to know for what I am now on my trial. I have said that I did not know for what reason this bill of indictment had been procured against me. There are two circumstances that may have led to it, which I will relate to you. First, when Mr. Boyd told me of a project he had for harmonizing the then existing disputes between the

inns and the outs of the Tradesmen's Bank, which was to leave in the pockets of the incautious sellers \$84,000 profit, to have the bank returned to them, and for the 'great unknown' quietly to resign the bank losing his \$84,000, for having dared to do what every man in the community considers himself at liberty to do, viz: purchase bank stock—when Mr. Boyd mentioned this splendid money making scheme to me, I exclaimed, 'preposterous! nonsense! if it was my case, I would make you disgorge your ill-gotten gains.' For this high offence, the high offence of expressing a sound opinion of, and honest indignation at such a proposition, the parties, or some of them, which I know not, have been filling the ears of the district attorney with suspicions of me. The other circumstance was that before my indictment I heard everywhere that the district attorney was proclaiming with apparent exultation, that the gentlemen then indicted would all, to a certainty, be convicted, and that he held in his pocket abundant evidence of their guilt. This being repeated in my presence, at the funeral of Judge Van Ness, and my friend Mr. Eckford being one of the persons indicted, although I was not, myself, at that time, so unfortunate, I could not contain my indignation; and I did say that the district attorney was wrong; that the oath of his office imposed on him the same obligation to protect the innocent that it did to punish the guilty; and that if such a man as Henry Eckford, after a long life of private virtue and public usefulness, should have been, either by a combination of circumstances, a mistaken confidence in those about him, or a momentary relaxation of those rigid principles of morality which had hitherto regulated his every action, betrayed into error, it should fill the district attorney with grief and horror; and that he should go on to discharge the duties of his office with melancholy regret, and not go about the streets prejudging the case, and prejudicing the public mind; (adding to Mr. Price, who was present,) I wish you would say these things to the district attorney, and tell him also that he has fallen, very much fallen, in my estimation. Now it may have been better that I had listened in silence, and denied utterance to those offending words, and performed the difficult task of restraining my tongue from pursuing its accustomed frank and fearless course.

"Gentlemen of the jury, nothing can be more obvious than that all these proceedings are a crusade against Jacob Barker, who has done no wrong. The district attorney spread and drew his net again and again without catching him. Others were indicted by the dozen—those who had failed to protect the interests of the stockholder and creditor of the companies intrusted to their management were indicted; and although this happened days, weeks, and almost months before he got me in the boat, yet he never thought to bring one of the individuals thus indicted to trial. At length he induced a

too willing grand jury to gratify his wishes, by enrolling Jacob Barker among the number who were to come here and meet their accusers. Please take notice, gentlemen, that Jacob Barker had preserved from the calamities of the times all the institutions which he had any part in conducting. No delay, no excuse, no plea is urged for postponing the trial; every other indictment is forgotten and left slumbering on the dusty shelves of the district attorney. This last of all is first called up, and for what? For fear lest the hideous monster, prejudice, which has been thus artificially got up in Wall street, and about this house, should give way to calm reflection, to reason, and to a becoming sense of propriety. But, gentlemen of the jury, I do not complain; I have, from the hour of indictment, been impatient for a trial; and, in truth I may say, the week which elapsed previous to its commencement has been the most impatient in my life.

"[Mr. Barker having, when he first rose to address the jury, borrowed of the clerk the bill of indictment, and on the margin made a few pencil memorandums to use in lieu of notes, proceeded to comment on the allegations therein, in the order in which they stood.] With the Mechanics' Fire Insurance Company (he said) I never had a single transaction, nor did I ever own a share of stock in that company; and if the district attorney will ask its president and directors, they will one and all say on their oaths, that Jacob Barker has not, directly or indirectly, defrauded that company. With the Tradesmen's Bank, he has not had any dealings, and he never owned a single share in it during the whole course of his life. Eight hundred shares of its stock were transferred to Seth Sturtevant, a clerk in the Western Insurance Company, for the use of that company, by William P. Rathbone. Three hundred shares were transferred back in a day or two; Mr. Rathbone wanted the whole, and it not being convenient at the moment to transfer them, I, being the active officer of the Western Company, gave a memorandum to Mr. Rathbone, promising to deliver to S. L. Gouverneur, esq., five hundred shares of bank stock. Observe, 'promised to deliver;' not borrowed, not received, not to return, as has been proclaimed to you in triumph, but simply to 'deliver,' and this promise was immediately thereafter openly and publicly complied with; to do which, I drove to the Tradesmen's Bank at noon-day, in my own carriage, amid the surrounding multitude and publicly proclaimed my readiness to comply on the surrender of my memorandum. And is this open and prudent course to be considered evidence of fraud; does it not rather indicate everything else? Had I been the 'great unknown' purchaser—had I been a secret conspirator—had I been guilty of the least impropriety, should I not have sent a clerk or a friend? If these men had been my agents, my tools, my creatures, with whom I had in-

trusted four or five thousand shares of stock, and the whole bank—should I have denied to them so publicly, and at so critical a moment, the trifling confidence of delivering five hundred shares of stock, relying on their fidelity to return the obligation for it. This single circumstance speaks, to my mind, volumes, but it is like my every other act, to be tortured into evidence of guilt—is declared to be 'my peculiar way of doing things,' and to have been planned on purpose to deceive.

"I perceive, by the course of the examination, that a great flourish is to be made by the district attorney about this clerk's not being of age. On this subject, I can only say, that we are not apt to consider wrong the things we have openly practiced through life. I traded a little when a boy, and before I was of age was interested in four ships and a brig, and had my note discounted and continued as an accommodation note at the United States Branch Bank. I have, since I became of age, confided a great portion of my business to young gentlemen not 21 years old, and it never occurred to me that such confidence could be made the foundation of a criminal prosecution. In addition to this practice, Mr. Catlin, Mr. Fleming, and I believe every witness who was examined on the subject, told you, that it was the universal custom to pass stocks by blank powers, that is, without naming the purchaser or seller; by which means it could pass through the hands of persons without number, and not one of them appear, or be known. However, I will not detain you longer about this custom, but examine the legal operations of the system. Stock and all other property is the mere creature of the law, and is equally amenable to that law in the hands of a minor, as in the hands of a person of age. If such minor has no interest in it, the chancellor can take it from him, the same as a court of law can take it from a person of full age; therefore, this tale about the youth of Seth Sturtevant is got up for the sole purpose of making a great noise about nothing, and producing stage effect.

"In connexion with the Tradesmen's Bank, there is another circumstance. Mr. Cox, who, during the ten days' reign of the new dynasty over that bank, was its cashier, was formerly in my employ; at which time, I left a message for him to write some democratic tickets, for the then pending election, to be furnished to a stevedore, also in my employ, who could not write, and who had applied for them. Mr. Cox declined the service. I told him that it had not anything to do with his political principles; that I did not wish him to vote or give his name to anything. He appeared totally to mistake the matter; and being unwilling to part with him, I recommended him to consult his friends. He did so. He consulted Mr. Lydig and others, and returned, saying, he should adhere to his refusal. The consequence was, he left my employ, and the Evening Post charged

we with dismissing a most worthy clerk because he would not vote for the democratic ticket. Mr. Cox seeing this, and being an honest and generous man, although indignant at what he, no doubt, supposed to be, on my part, oppression, came immediately forward, and published to the world, that I had not in the whole course of my life, said one word to him about voting, or about his political principles; nor had I, to his knowledge or belief, even allowed myself to talk on the subject to a single clerk in my employ. Mr. Cox, as you may well conclude, soon found his way back into my counting-house, and served me faithfully for a long time. But in consequence of my misfortunes, he had to seek employment elsewhere; and for about seven years he had been in the employment of others, until the recent difficulty at the Tradesmen's Bank; about which time he suddenly fell sick. I then, for the first time in my life, visited him, found him in a high fever, surrounded by a lovely wife, beautiful children, and two not less lovely sisters, all in tears. They, with trembling solicitude, told me that they supposed Mr. Cox's apprehensions in relation to losing his place, on the salary of which his family depended, contributed greatly to increase his disorder. My reply was, 'no matter if he does lose his place, there are others as good as that. He has got into bad company, and the sooner he clears out the better. Let him resign immediately, and when he gets well, if he wants employment, let him come back to me, and he shall not want. He is an honest man, and I dare employ him amid the cloud of suspicion that for the moment surrounds him.' These remarks animated him, and he approved of the suggestion. I immediately drafted for him a letter of resignation, which was instantly sent to Mr. Gouverneur, and when he got well he did come, and he found employment. And this, gentlemen of the jury, is to be urged upon you as evidence of my guilt. Wait, I beseech you, wait until these lovely women come into court, and relate the tale for themselves. Yes, I did more. Mr. Cox has also been indicted. I advised him not to employ any professional man to defend him, but to petition the court to grant that favor to me, urging on him, that his whole duties could, in the language of General Gaines, be described in one word, and that word was *obedience*. That his whole offence consisted in having been obedient to his superiors, to men whose duty it was to decide by their votes, that by law he had no right to a voice in such decisions, but was imperiously bound to carry into full and prompt effect the decisions of the directors. That he had not, according to the best of my knowledge and belief, done anything more than to be obedient, which, if I was allowed to plead his cause, I supposed I could make as manifest as the light of the sun, to any jury on earth. This too, I suppose, is to be urged as further evidence of my crime. Mr. Beers called on me, as he did on others, shortly before the election of direc-

tors for the Tradesmen's Bank, and inquired if I knew who had purchased the bank, and told me that Mr. Cox was to be the cashier. I answered that I had not the least interest in it, and did not know who had, but that I supposed I could find out. He wished me to do so, and ascertain for him the terms on which it could be purchased. I told him I would not intermeddle to the prejudice of Mr. Cox, that he had been one of my boys, and been faithful, that he was an honest man, that it was a *sine qua non* with me that he must be provided for, if I interfered, that I did not know anything about his views, that I had not seen him for more than a month, and did not before know that he was to be the cashier. Mr. Beers gave me to understand that everything should be made satisfactory; and I made the effort to find out the purchaser. I did not succeed, and so reported the business.

"The Morris Canal and Banking Company is also named as one of the institutions which I am charged with defrauding. This institution I saved from insolvency. The president and directors have sworn that I acted with zeal, fidelity, and success; and that I did not defraud the Morris Canal and Banking Company. They promised me a fee of five thousand dollars; and you have seen the devices resorted to for the purpose of chousing me out of the richly earned commission. They, through Mr. Vermilyea, lent the Dutchess County Insurance Company ten thousand dollars, which sum was paid back to their cashier, the first time it was applied for. When they were run for specie, trembling, and expecting to stop every hour, the Dutchess County Insurance Company lent them five thousand dollars; and agreed to wait six months for its return, without any other compensation than simple interest; and the debt is still due from the Morris Canal and Banking Company to the Dutchess company. During the pressure on the bank, William Bayard, esq., called on me with a letter from Mr. Eckford, soliciting my assistance to the amount of twenty-five thousand dollars, and guaranteeing to the amount of ten thousand dollars. The ten thousand dollars I offered to furnish, without any other compensation than lawful interest, but the solidity of the notes offered as security for the other fifteen thousand dollars being to me unknown, I declined taking them. At the same time, I stated that they could be negotiated at a discount of 30, or 33½ per cent. This was deemed too much, and the negotiation fell through.

"The district attorney, in his opening speech, told you that Mr. Vermilyea and myself had had the management of the finances of the Morris Canal and Banking Company, and that Mr. Eckford had stood aloof, but that the funds had been purloined by Mr. Eckford, Mr. Davis, and some others. On the trial, the president, cashier, and clerks, all swore that I had not, in a single instance, intermeddled with their funds, nor had I

ever been in the office of the company; but Mr. Gilchrist, the cashier, said, that money to a vast amount was paid to the other gentlemen, and proved the checks of the Morris Canal Company on the Fulton Bank, in favor of Mr. Eckford, Mr. Davis, &c., which checks had been paid and not accounted for, and no memorandum made of their indebtedness. This was no concern of mine, the witnesses all exonerating me; but as the district attorney had coupled my name with the alleged fraud, I took upon myself to interrogate Mr. Gilchrist, and exhibited by him the whole imposition attempted to be practiced. My questions were: 'Is the published statement of the affairs of the Morris Canal Company true or false?' He answered, 'True.' 'Did you help make up that statement?' 'I did.' 'It states about \$8,000 to be the whole amount of the losses sustained by the bank from its commencement; did you mean that the whole losses of the bank had not been greater?' 'I did; and still think so.' 'Are any part of those losses formed by the money paid for those checks?' 'Not any.' 'Suppose the money had been borrowed by the Morris Canal Company of Mr. Eckford and others, and the same deposited in the Fulton Bank to the credit of the Morris Canal Company, and those checks subsequently given to pay them therefore, would not the affairs of the company have stood as they now stand?' 'They would.' 'Then the company cannot have lost the money, or any part of it.' 'No: It has lost nothing by the money paid for those checks.' Here, gentlemen, you see how monstrous is the conduct of these men, who are endeavoring to make it appear, that giving checks to pay money borrowed was making a fraudulent use of the funds of the bank without security or compensation. You will also bear in mind, that Mr. Bayard stated, that Mr. Eckford had often lent the company money, when it was in want, and that the company had never lent Mr. Eckford any.

"Here, gentlemen, you have the whole length, breadth, body and soul of my offending against the Morris Canal and Banking Company; excepting, indeed, that I am to be blamed for considering the laborer worthy of his hire. For you must always remember that I met at the threshold all applications for assistance from that bank, with the declaration, 'if you wish me to work for you, I must be paid;' and that the fee of five thousand dollars was stipulated for at the commencement of the negotiation for the return of the twenty-five hundred shares of stock, and in the presence of Mr. Eckford and Mr. Ogden, both of whom were directors of that bank, and members of its finance committee. And yet you are told that I attempted to procure a commission from both sides. Now I never did attempt to charge or think of charging Mr. Eckford anything, and if I had, it would not have been charging both sides; for Mr. Eckford and Mr. Ogden were, as to the

bargain to be made by me, on one and the same side, and the Fulton Bank was on the other side; and surely it has not been, nor will it be pretended, that I charged the Fulton Bank a single cent for my services. On the contrary, the moment the interest of my employers required a sacrifice on my part, I gratuitously offered to surrender my whole commission, this mighty five thousand dollars, to the Fulton Bank? and yet I am charged with attempting to defraud both institutions.

"I am also charged with a conspiracy to defraud Messrs. H. and G. Barclay, R. H. Hough and E. W. King. The two former gentlemen have been on the stand, and you have heard them examined. Not one word to my prejudice escaped their lips; and the only conspiracy to defraud that I know of, in connexion with them, is as sworn to by themselves; that they, as stockholders, and as I have before said, as partners in the concern, are endeavoring to divide the effects of the Life and Fire Insurance Company among the partners of the firm, to the exclusion of their creditors, on the dishonorable plea that the bonds were unlawfully issued. With such a conspiracy, gentlemen, please bear in mind that I had nothing to do; as I was not a stockholder, a director, or an officer of the Life and Fire Insurance Company; nor its agent in the issuing or selling a single bond. As to Alderman King, the district attorney has not dared to call him. He is an honest man, and my neighbor; and should he be called, he would on his oath tell you that Jacob Barker has not either defrauded him, or done him or his family an unkindness in his whole life. A lady is also introduced into this part of the plot, a most worthy woman, Miss Ann Titus, and what did she swear? You must all remember how emphatically she declared that Jacob Barker had not, to her knowledge, directly or indirectly defrauded her; that she had never thought he had done so, nor had she ever said to a single human being aught to his prejudice.

"We now, gentlemen of the jury, come to the most fruitful source of misrepresentation, the affairs of the Life and Fire Insurance Company. So far as I have been connected therewith, the district attorney has furnished abundant testimony that I have not had any part or lot in the management of their affairs, with the exception of lending them money on satisfactory security, selling some Fulton Bank stock, and accepting a power of attorney to collect debts due, to pay all my lawful claims, and hand the excess over to the company; that I have been faithful in my stewardship; that I offered to return all the securities received on the payment of the money due; and that until a decision of the chancellor could be had thereon, I offered to pay all that could be collected into the hands of Lynde Catlin, esq., president of the Merchants' Bank. I never knew one word about the manner in which the books

have been kept, until after the failure; and if I should remain on trial until doomsday not a single witness could be brought who could gainsay that fact. I have had great confidence in that company, and uniformly said so, and all my conduct will square with that confidence.

"I have sold but few, very few bonds; to Garniss I sold some to raise money for the Dutchess Insurance Company to use during my absence, but I bought of him bonds to a far greater amount. In 1819, when the aristocracy of Wall street were levying all their artillery at my Exchange Bank, and when other men of wealth were frightened off from my support, Mr. Eckford generously loosened his purse strings, and without pay, price or security, lent me large sums of money; the 18th of June, 1819, when I had to lower my colors to the allied forces, I, accompanied by my friend Mr. Halleck, called him up at midnight and gave him security.

"Gentlemen of the jury, the individual who thus supported me, in turn was disappointed in the receipts he had a right to have expected in the payment for the frigates he had built, which disappointment was wholly owing to the failure of the Goldsmids, great bankers of London. Under these circumstances he applied to me to aid the Life and Fire Company. I did so, and I believe to his entire satisfaction. They secured me, and is Henry Eckford to be blamed for approving of having done for Jacob Barker in 1826, what Jacob Barker did for Henry Eckford in 1819?

"I have now gone through the motley group of offences in the indictment, in addition to which, gentlemen of the jury, the district attorney, in his opening, made some statements which may be deemed worthy of notice. Among other things he said that I went to the iron chest of the Life and Fire Company, filled my pockets with bonds and mortgages, and went off with them. This allegation I pronounce in all its parts destitute of truth, and notwithstanding the pomp and parade with which the district attorney put forth that flourish, he has not asked a single witness a word about it, although I have more than once lifted up to his recollection the iron chest. The district attorney, for the purpose of casting an air of suspicion on my conduct, declared that the Mercantile Insurance Company and Jacob Barker are one and the same thing; that Jacob Barker had appointed one of his creatures its president; that he had so much of the stock as to regulate the election as he pleased; and that his talk about William R. Thurston, or any other of the directors, was a mere flourish; that as to William R. Thurston, he was a mere 'creature of Jacob Barker,' a 'man of straw' in his fingers. On producing testimony of the worth of that gentleman, the district attorney admitted him to be a gentleman of exemplary conduct, an old inhabitant of this city, retired from a long life of commercial pursuits, living

on the fruits of his industry and economy, and worth \$300,000. It is not open for inquiry; the district attorney gratuitously admitted it, I accepted it, he drove the nail, and I clinched it; that point is therefore at rest, but I should like to have a few more such men of straw in my fingers.

"Now, gentlemen of the jury, I have always considered a man of straw a very different sort of thing, and as I am ignorant of what your notions may be on the subject, and do not know of any other rule of judgment than by comparison, it becomes my duty to describe what, in my judgment, ought to be considered a man in the hands of another, viz: the district attorney is a taller man than Jacob Barker, and probably stronger; if the testimony furnished by the records of our criminal court is to be believed, the district attorney has had a collegiate education, and therefore has learned how to string together a great many highflown and melodious words, and by their use to make a great mystery of very simple things, and when supported at his nightly meetings on the one hand by that demon Leavitt, and on the other by the grave Cheesbrough, with his argus eyes, he trims his midnight lamp, dips his malignant pen in gall, and records the hellish deeds to which these two preservers of the interests of absent stockholders are to swear in court, there Jacob Barker is a man of straw, a mere creature, which crumbles into dust in the hands of the district attorney; but when he comes forth and meets Jacob Barker by the light of the meridian sun, before this learned and just court, restrained and regulated by the rules of evidence as laid down by Philips, to be passed upon by an honest jury, then it is that the district attorney is metamorphosed into a man of straw, a mere creature in the hands of Jacob Barker, and (here extending his arm and contracting his fingers in the most impassioned manner) I will crack him all to pieces, as I would a pipe stem—pausing and gently saying, gentlemen of the jury, observe, I do not mean to do him any personal harm, no more than the jolly tar meant to do to the \$20 bank note when he on his topknots went into the Mechanics' Bank and threw it down on the counter, exclaiming to the teller, 'there, damn you, crack it all to pieces; I want some shiners that will jingle, jingle, jingle,' at the same time patting his pocket. Now, I only mean that I will here crack this district attorney, this mere man of straw, this creature in my fingers all to pieces, the mere mention of which, in connexion with the highly celebrated iron chest, shall not only jingle, jingle, jingle, at his honor the mayor's levees, but at the tea party of every lady in town, not even excepting that of the lady brought into court by the district attorney to detail the social conversations of the visitors to the family of her uncle, one of the prisoners at the bar.

"The district attorney stated that Mr.

Eckford and Mr. Barker had conspired to change the directors of the Fulton Bank about the middle of July for the purpose of fraudulently using the funds of that bank, and that we had a meeting at the Bank Coffee House for the purpose of consummating the fraudulent schemes. Now, gentlemen of the jury, you must remember the testimony which has been adduced in support of this charge. The bank had very disastrous dealings. Reports were abroad that it had lost half its capital. Being very deeply interested in the stock, and feeling that a failure of the bank would prove disastrous to the moneyed interest of the city, I stated these things to Mr. Eckford, and he agreed with me in the opinion that the interest of the bank required that it should be placed under the administration of persons of great respectability who resided in the neighborhood. I told him that all Brown and Spencer appeared to want was a loan; and that he and I, in connexion with the bank, had better make such loan than for the bank to remain longer in their hands. He told me to do what I liked in the business, and if I lost by the operation he would bear one half thereof. The negotiation was set on foot, and it was successful; and Messrs. Spencer, Brown, Rathbone, Franklin, McCready, and John Brown did resign on the day, and the day following the Bank Coffee House meeting Richard M. Lawrence, Thomas Hazard, jr., William R. Thurston, Nathan Comstock, Barney Corse, and Charles Dickenson were appointed to their places. Their respectability, wealth, and intelligence, together with that of William W. Fox, William W. Mott, James Lovett, Robert C. Cornell, John R. Willis, and John Flack—all of whom it is in proof that Mr. Barker endeavored to induce to accept of seats at that Board—forbid the supposition that any improper use was to be made of the funds about to be placed under the control of such men.

"Many of them have testified that Mr. Barker told them, when he applied to them to take part in the management of the bank, that all he wanted was for them to make it a good bank in their own way. Mr. Eckford never took part nor lot in forming the new direction, nor intermeddled in the business further than to recommend to Messrs. Franklin and Rathbone to resign, and to go with Mr. Barker to the Bank Coffee House to unite in recommending G. W. Brown to do the same thing, and, further, to advance some of the money towards the loan to the Hudson Insurance Company. If Mr. Eckford wanted any influence at that bank, is it probable he would have recommended Messrs. Franklin and Rathbone to resign?

"The hardship and injustice of this mighty mixture of insurance companies, banks, stock dealers, carpenters, bankers, and brokers, are greatly beyond my powers of description. The district attorney seems to be a great proficient

in the art of compounding many simples into one great mystery; and he seems to have electrified his packed audience with the brilliant display of the gigantic powers of his mind in this particular quality—a quality, however, better adapted for an apothecary than the student of Blackstone and Coke.

"I have not, gentlemen of the jury, taken up your time in reading or referring to law books, for a very good reason: I never read one in my life, although I have looked into many. I did in the early part of this trial read half a page from Burke, and I here beg leave to recommend to your grave consideration the sentiments of that great man, so beautifully expressed:

"My lords, the Commons wait the issue of this cause with trembling solicitude. Twenty-two years have been employed in it, seven of which have passed in this trial. They behold the dearest interests of their country deeply involved in it; they feel that the very existence of this constitution depends upon it. Your lordship's justice stands pre-eminent in the world; but it stands amidst a vast heap of ruins which surrounds it in every corner of Europe. If you slacken justice, and thereby weaken the bonds of society, the well tempered authority of this court, which, I trust in God, will continue to the end of time, must receive a fatal wound that no balm can cure, that no time can restore.

"My lords, it is not the criminality of the prisoner, it is not the claims of the Commons to demand judgment to be passed upon him, it is not the honor and dignity of this court and the welfare of millions of the human race, that alone call upon you. When the devouring flames shall have destroyed this perishing globe and it sinks into the abyss of nature from whence it was commanded into existence by the great author of it, then, my lords, when all nature, kings, and judges themselves must answer for their actions, there will be found what supersedes creation itself, namely, eternal justice. It was the attribute of the great God of nature before worlds were, it will reside with him when they perish, and the earthly portion of it, committed to your care, is now solemnly deposited in your hands by the Commons of England."

"The district attorney, in his opening, also told you about erasures and false entries in the books of the Life and Fire Company. Be this true or false, I had no knowledge, part, or lot in it. It is enough for my purpose to know that the books or the companies in which I am employed are kept with marked exactness. I, however, beg leave of such of the defendants as are interested in that question to say, that there is no evidence of false entries, and that the two cases of erasures appear to be a mere correction of a mistake in the original entry, and the entries thus corrected, as sworn by the receiver in chancery, are as they should be.

"For the purpose of proving fraud on the bondholders, the district attorney at one moment makes the Life and Fire Company utterly insolvent, and in the next, for the purpose of proving fraud on the stockholders, he makes out that there is something left for them after paying all their debts. He reminds one of the expressions of Robinson Crusoe's man Friday to his master: 'You blow to warm your fingers, you blow to cool your soup, you blow hot and you blow cold with the same breath; you must be possessed with some evil spirit.' So much and no more reason has the district attorney for inferring fraud from the evidence produced.

"I find myself denominated a broker in the bill of indictment, which is not true. I am not, nor was I ever a broker. I mean no disparagement to the gentlemen who belong to that profession. I know many of them to be among our most meritorious citizens. Many of them are my personal friends, that I not only respect but love. But I am so described on a sudden for a fraudulent purpose. A broker's commission is one-fourth of one per cent., while a commercial commission is two and a half to five per cent., according to circumstances. I have charged the Life and Fire Insurance Company two and a half per cent., and this, for a broker, might well be considered a fraud, if it was unaccompanied with any redeeming explanation, while perfectly fair and proper in a commission merchant; but under what circumstances is this made? Mr. Eckford had rendered me great assistance when I was in difficulty, and in return he had a right to expect me, when he requested it, to give aid to the Life and Fire Insurance Company, over which he presided, and in the support of which his purse and pride were enlisted.

"He applied to me to become the agent; I cheerfully offered my services. He wished to stipulate for an adequate compensation; I declined, and he promised to see me paid when it was over. You have seen with what fidelity and success I carried on all these negotiations. The object for which I embarked was lost in the failure of the company, and it then became a mere matter of interest. I therefore placed in the account rendered to the receivers a commercial commission of two and a half per cent., which I think I richly earned; but observe, gentlemen, the remarks I made when I delivered the account. Mr. Hoffman, one of the receivers, has told you, when called as a witness by the district attorney on the part of the people, that I stated that the charge was only intended to lift the subject up to the view of the chancellor, explaining, at the same time, the terms on which I had embarked, and that I considered the chancellor, when he should pass on the accounts, to be at perfect liberty to reduce or expunge the charge, if he should think proper to do so; and that I should not insist on any pay. In consequence

of this unexpected disclosure of the testimony, you will not hear one word from the district attorney about my being a broker, or the enormity of the charge, both which would otherwise have been most fruitful sources of crimination.

"Gentlemen of the jury, I have already mentioned that I had not taken a single note, nor have I read any of those taken by others. One of the gentlemen, however, has furnished me with a list of the names of the witnesses, which will call to my recollection what they said; and so far as I may consider such testimony as affecting me, I must examine it, although very unwilling to trespass so long on your time. These proceedings against me, gentlemen of the jury, I have more than once told you were urged on by the monied aristocracy of Wall-street. They have become desperate. They know it is now or never, and that if they do not now succeed in destroying Jacob Barker he will polish the paving of the vaults of such of the banks as have joined in this unholy war.

"Seixas Nathan.—This witness stated that not one dollar was paid to me of the proceeds of the water or gas stock sold by him for the Life and Fire Insurance Company which had been received from Malapar; and this, gentlemen of the jury, you will recollect the district attorney said most boldly had been put into my pocket by Mr. Nathan.

"David B. Ogden, esq., told you that he was a director and one of the finance committee of the Morris Canal and Banking Company, and that I had acted with fidelity, zeal, and capacity in the agency I undertook for that bank; that I did all that was expected of me; that Mr. Eckford was present when he requested my assistance, and when I required \$5,000 commission, if successful, and if not successful no compensation, and that he promised to do all he could to get for me the fee, and the minutes of the proceedings of the directors of the Morris Canal and Banking Company prove that he had unlimited powers conferred on him to consummate this negotiation; and that after this, and after knowing my terms, he urged me to continue to exert myself; that I had either for myself, or for the Dutchess County Insurance Company, lent the Morris Canal and Banking Company \$5,000 for six months, without any other compensation than simple interest; and that I had not, to his knowledge, directly or indirectly defrauded the Morris Canal Bank.

"Robert Gilchrist, cashier of the Morris Canal Bank, confirmed the statement about the loan of \$5,000, its being yet due, and the return of the \$10,000, and stated that I had not, to his knowledge, defrauded that bank.

"Abraham Ogden, esq., confirmed the statement of Mr. Gilchrist, adding that he had not before heard of the claim for the \$5,000, and that he did not think it right for me to claim it. Every one who knows Mr. Ogden, will give full

credit to his testimony, so far as to good intentions and the facts within his recollection, but he, no doubt, has forgotten the circumstance, as David Leavitt swore that he communicated the fact of the commission to the board of directors, when Mr. Ogden was present.

"William Bayard, esq., the assistant president of the Morris Canal Bank, confirmed on his oath all my statements relative to that bank, so far as they had come to his knowledge.

"A lad seventeen years of age swore that I had borrowed ten thousand dollars of the Morris Canal Bank; that I had paid it; that I had lent that bank five thousand dollars; that it was yet due me; but that my conduct had been dishonorable. That he got his information from others; that he had not seen me, nor heard me speak of the transaction to which he alluded, except that when Mr. Tallman sent him with part of the money to the Dutchess Company, he saw me in the office, and I pointed out Mr. Halleck, the secretary of that company, as the proper person to receive it.* On being asked why he accused me of dishonor, he stated that his object was to do away the testimony of Mr. Gilchrist, the cashier, who he supposed did not understand the subject. I asked him if he heard Mr. Gilchrist give his testimony. He said no, but that he had seen David Clarkson and Robert L. Reed together. That Mr. Reed had told him what Mr. Gilchrist had said, and that Mr. Clarkson had sent him to the district attorney to confer as to what he should say on the subject, and that he had been with the district attorney before to explain as to the testimony he was to give on this trial. On being questioned further as to his reasons for considering my conduct dishonorable, he stated that Mr. Gilchrist had told him that I disputed the payment of a trifling claim for interest. He was then reminded of the debt of \$5,000, and asked if the bank could not pay themselves the trifling interest claim out of it. He said no, because they had given security. The court then asked what security? He answered Morris Canal stock. This last fact sufficiently proves that he did not understand what he was swearing to, and that he had been a trained witness, sent here by the conspirators for my destruction, to insult me. Yes, gentlemen of the jury, a beardless boy, in the employ of a bank which I had saved from insolvency, was sent here to insult the father of twelve children. As to the security, the indebtedness of the company bound all their stock and effects, and if they could not pay the debt the stock was good for nothing. What would it avail the holder of a life and fire bond to have as security life and fire stock? The object and effect of security is to have

something to resort to in case the principal fails. The stock, in case of the failure of the company, would afford no such resort, any more than for a man to endorse his own note would give security for its payment.

"David Leavitt swore that he had divulged to the directors of the Morris Canal Company the communication that I had made in confidence to the directors of the Fulton Bank about my commissions. He swore that he, on behalf of the Fulton bank, employed Mr. Barker to go and loan \$20,000 to the Hudson Company, of which one half was to be furnished by, and at the risk of, Mr. Barker and Mr. Eckford, on the supposition that \$100,000 would carry the Hudson Company through all their difficulties; knowing at that time that the bank had a claim at sight for \$163,000 on that company, with which he could overwhelm it at any moment; and knowing also that they were on the eve of bankruptcy, and that he, a day or two before, had got all their securities that were considered of any value; the whole of which he preserved a death-like secret from me.

"Gentlemen, you saw how he winced and claimed protection from the court when I attempted to make him tell his connexion with Malapar, and the white lead works, and the marble bonds. You heard him ask me 'if I expected him to impeach himself;' and because I could not help telling him that 'he had already done it,' this honorable court was greatly offended, and required me to promise to appear before them when this trial was over and answer for the offence. You saw how he prevaricated and attempted to evade my every question put with the view, the single view, of wringing from him the secrets of his heart; and I am greatly indebted to the unexampled skill and success of Mr. Williams, counsel for the other defendants in this case, in eliciting from him what I had failed to make him acknowledge. When this man first heard of my indictment he clapped his hands, roared out a loud laugh in the presence of all the clerks in the bank, jumped over a bench standing by his side, and spun round in a joyous delirium at the prospect of glutting his vengeance. Not content with the mischief done me, he calls on that venerable gentleman, [pointing to Mr. Hazard,] whose head has been whitened with the snow of nearly seventy winters, and tells him that his son-in-law, Jacob Barker, was very much depressed and dispirited about this indictment. Gentlemen of the jury, I put it to you to say whether I either look like, or have acted in any part of the trial like, a depressed and dispirited man, one overwhelmed with conscious guilt. Please look at me, gentlemen of the jury, and say on your oaths whether or not you think any man could with truth have thus characterized me. But suppose it had been so, and that David Leavitt, a hypocritical professor, had known it, was it kind, was it fair, was it manly for him to dis-

* These \$10,000 were in the notes of the Morris Canal Bank; to oblige the bank Mr. Barker undertook to use them in the business of the Dutchess Company, so far as should be found convenient; most of them, not having been used, were returned, with the money for such as had been used.

turb the happiness of such a man as Mr. Hazard, and such a family as his, with the relation of the dishonor of a branch of that family? No; such conduct could not have emanated from any feeling but the most diabolical spirit of malignancy. He swore, on this trial, to state all the facts he knew; in place of which he travelled out of the record to insult a prisoner at the bar, by swearing he had committed a fraud, without telling in what particular; and, when he came to be cross-examined by that prisoner in person, it turned out that he, Leavitt, and not I, had committed the fraud. He swore that the negotiation for the return of Morris Canal stock was not completed, because Jacob Barker flew from his bargain. On the cross-examination it was proved that it was Leavitt, and not Barker, who had flown from the bargain; and besides, that he had been treacherous to his associate directors in the business. He swore that Barker had nothing to do with the final close of the bargain. On the cross-examination it turned out that Jacob Barker was the very pivot on which it turned. He swore fraud in the lump against an individual, and detailed facts which, if true, made that individual carry off half the capital of the bank; and, at the very close of these denunciations, he swore that that individual had not intended to do any wrong. He swore that he had communicated to Clarkson the secrets of the bank, in violation of the resolution of the directors, and thus enabled Clarkson, as he swore he did, to palm off upon me a large amount of stock at eighty which was only worth twenty-five. He, Leavitt, swore that my check received from Davis was only \$1,000 or \$1,200, when it was proved to be for \$12,757 50. Yes, gentlemen of the jury, the man who swore fraud against me made all these false statements, and further admitted, on his cross-examination, the corrupt bargain he made with Mr. Cheesbrough; that the bank paid eleven-twelfths of \$2,000 of the \$6,000 bonus, pursuant to the terms of a resolution of the directors; every line of which, when taken in connexion with the deed it affected to hide from all the other directors, carries fraud, falsehood, and deception on the face of it. The residue of this bonus, say \$4,000, this Leavitt swore he paid to Cheesbrough; that he received back \$2,000 of it from Mark Spencer; that Mr. Spencer was to be reimbursed for it by interest on overdrawings; that he ordered the clerk of the bank to pay Mr. Spencer's checks for \$68,000, without funds and without security, and to keep these checks in his drawer for three weeks, by which means his account did not appear overdrawn; and the facts of the case were thus hid from the directors, and Leavitt enabled to pocket these two thousand dollars interest money received from Mr. Spencer, without appearing to rob the bank. He tells you further, that he intended also to have got the other two thousand dollars from the vaults

of the bank, but by what new device or fraud he did not vouchsafe to tell you.

"The iniquity of this man does not end here. After having, under the guise of paying a president, and that in advance too, for his most faithful services until April 1827, he meant for him to resign the moment of the passage of that resolution, and from that time he himself to have an equal salary from the stockholders, who had already lost almost their last dollar by the conduct of these rapacious men. But finding himself disappointed in his election as president, he again resorts to bargaining, and agreed with Mr. Brown, if he would vote for his election, that he would allow him to receive the whole salary for one year.

"The \$68,000 before alluded to will be lost to the bank, if the stockholders do not enforce their legal rights against David Leavitt's personal property. How did the accounts stand during Mr. Cheesbrough's administration? Why, the Hudson Company and its president were in the habit of drawing through the day for what money they wanted, making the account good at three o'clock. In place of which, David Leavitt, as soon as he was elected president, according to his own account, orders the checks to be paid and not charged, but to be kept hid in the drawers for three weeks, to enable him to get his \$2,000 interest without being detected, and that too to the amount of \$68,000, without a particle of security; and thus the Hudson Company and its president were released from all obligation to make deposits at three o'clock, or at any other time before the expiration of three weeks; and before that time, the Hudson Company and its president failed.

"Monstrous! And are these things to be permitted by men entrusted with the care of the funds of others—men that are paid for such care? And if one of the sufferers complains of such faithless conduct, is it to be tolerated that he is to be dragged here, disqualified from giving testimony, and branded with infamy by the guilty offender who is yet permitted to roam at large?

"Here, gentlemen of the jury, I have given you a faithful narration of this man's conduct as sworn to by himself. It speaks for itself—to attempt to delineate its enormity would be insulting your understanding. And this is the man who dared to swear fraud against me, when there was no fraud; and if there had been, it was *your* and not *his* prerogative to characterize it.

"David Clarkson swore that he purchased of me large amounts of Fulton Bank stock, in the months of March, April and May, on credit; that he had paid for all except fifty shares; that I had honorably fulfilled all my bargains in relation thereto; that about the 10th of July, he gave me \$50 for the privilege of delivering to me 200 shares any time within 60 days thereafter at 80; that he had delivered the

stock, and that I had paid him for it; and he exultingly said, 'you lost greatly by the bargain;' but he did not say that David Leavitt had communicated to him the disasters of the bank by which the value of the stock was reduced to 25 per cent., and that this enabled him to shave Mr. Barker. At the same time, gentlemen of the jury, when one David was, by his own oath, in constant communication with the other David about the secrets of the bank, he was, by the oath of Mr. Nevins, very reserved in his communications to that gentleman about the business of the bank. Mr. Clarkson also swore that when 100 of those shares bought of Mr. Barker became due, he called on him and refused to take them, supposing they were part of the 2,000 shares received by the Life and Fire Insurance Company in exchange for the Morris Canal and Banking Company stock. On Mr. Barker's assuring him they were not, he agreed to pay for them; that he did pay \$2,000 on account, pursuant to agreement, and promised the balance in four days. At the expiration of which he again refused, when some very hard words passed between us; immediately after he sent his partner to me with an apology and a thousand dollars on account, as a pledge of his sincerity. He further stated that the subject was before the grand jury, (gentlemen, observe the grand jury which refused to find a bill against me,) when he refused complying with the terms of adjustment stipulated at the termination of his first dispute, no doubt, in the hope that the grand jury would furnish him with an excuse for not paying, by finding a bill against me. Mr. Clarkson, on his oath, admitted that he had refused to pay for fifty shares of Fulton Bank stock purchased of me, because they were a part of the 2,000 shares received by the Life and Fire Company in exchange for Morris Canal and Banking Company stock, which exchange he denominated a swindling transaction, and that I had instituted a suit against him for the recovery thereof; therefore he must think if you should award the transaction fraudulent, it will insure him success against the pending suit for those 50 shares. A most disinterested witness truly to give testimony on this trial. If this was a suit for five dollars, the testimony of such a witness would not be taken; yet in a suit where every thing dear to man is at issue, we are not allowed to put forth that plea.

"Jacob Clinch, cashier of the Fulton Bank, confirmed my statement as to the payment of \$30,000 to the credit of William P. Rathbone, for the redemption of 300 shares of stock in that bank, and of the little business I had transacted with that bank. The Life and Fire book with the Fulton Bank, together with the clerk of the Mechanics' Bank, proved the check of Jacob Barker, received by Mr. Leavitt from Mr. Davis, to have been \$12,757 50, on the 6th July; and this check, gentlemen of the

jury, you will please to take notice, Leavitt swore was for only 1,000 or 1,200 dollars, although he never received but one check, perfectly recollected it, and the day on which he received it, and urged the smallness of the amount as an excuse for what he wished to make criminal in the clerks. When he swore to the amount, you must remember that I rose and cautioned him to be careful and to reflect, that I meant to tax his recollection severely; that I should hold him answerable for the mistake if he made any, and that if he did not remember, he had nothing to do but to say so. He still persisted in averring that it was only for 1,000 or 1,200 dollars. Using the mildest terms, how frail was his recollection, and what reliance can you place on any part of his testimony?

"I never entered into an association for purchasing a controlling influence over but one bank; and that was several years past, in relation to the North River Bank, and for the most praiseworthy purposes. In that case, myself and my associates purchased and paid the money for a majority of the stock, and were opposed by those who held their stock by virtue of stock notes to the bank itself; and yet we brought such a hornet's nest about our ears, that we were glad to accept the first good offer and sell out, since which, I have been well pleased to keep clear of such scrapes.

"I have not had any part in the partial distribution of the stock of the many banks and insurance companies that have been incorporated. I have not lent my name to others to subscribe for stock, nor have I, with a trifling exception, offered to subscribe to any of them for myself or for others. Whenever I want stock, I do not humble myself to commissioners or directors, but I go into Wall street, and there exert the right secured to every citizen, viz: to purchase and pay for as much or as little stock as I please, without holding myself accountable to a human being therefor.

"John I. Boyd swore that I met him on Sunday morning and inquired the news; that he told me the Trademen's Bank had been enjoined; that I replied, 'this is no news, I heard it at Bloomingdale last evening;' that I told him it would be a very serious thing for one of the city banks to stop payment, that there was no knowing where it would stop; that he should go and see the president, and that they had better consult Mr. Catlin, Mr. Eckford and others on the business, and that I would go to my office and wait two hours, where he, Mr. Boyd might apply in case he could make me useful. And here is an attempt to make it a crime in Jacob Barker to have heard in the evening, four miles in the country, a matter of fact known to the whole city early in the afternoon; a fact of such vast importance to the city and to the nation, and which related so immediately to the business in which he was very extensively engaged.

"Gentlemen of the jury, if Jacob Barker had not known it that evening, the public would have considered him totally unworthy of the high reputation they had awarded him for keeping, as the sailors say, 'a bright look out.'

"It is universally admitted that Wall street, with all its sins, decried as it is, regulates the finances of the nation—on the operations of that street depends the whole commerce of the country. It is like the heart of man, through which the blood from every extremity of the body has to circulate—then I ask you, was the solicitude manifested by Jacob Barker on the happening of what was likely to shock the fabric on which the finances of the nation depended strange? So strange as to warrant the conclusion that he was a guilty conspirator? Had he been interested in the bank, would not his own vanity, the confidence he feels in his own ability to conduct a difficult affair, have led him into the heat of the battle? Would he not have done as he did at the Fulton Bank—rushed into the thickest of it, placed himself in the front ranks, pledged his own money and stock, and exhorted the directors to save the bank from ruin? But he goes quietly to his office, promising to wait two hours to be called on by Mr. Boyd, if he could be made useful—perhaps he wanted another \$5,000 fee.

"In relation to the Fulton Bank and the Tradesmen's Bank, Mr. Barker's conduct was as different as the interest he felt in the two institutions; and although directly opposite, you, gentlemen of the jury, are called upon to construe both alike as evidence of a guilty conspiracy.

"Mr. Boyd tells you also that he was in the constant habit of consulting Mr. Barker about various branches of business; that he held the opinions of Mr. Barker in high estimation, and that Mr. Barker always gave them freely and fearlessly, regardless of the consequences to himself or to others. Mr. Boyd also confirmed the statement about his plan for harmonizing the difficulties in relation to the Tradesmen's Bank, and stated that so far from considering it a secret, or myself interested, I jocosely mentioned the brilliancy of the scheme to Alderman Thorne, one of the disputants whom we happened to meet at the time, whereupon Mr. Boyd upbraided me for letting out his secrets. Mr. Boyd also swore that nothing had happened at any time, either before or after the election, that led him to suppose I had any interest or agency in the purchase of the bank.

"I do not mean, gentlemen of the jury, to be understood, by the zeal manifested to rid myself from all suspicion of being a participant therein, as subscribing to the doctrine that I had not as much right to purchase stock in the Tradesmen's Bank as any other stock. But as the truth is that I had not any concern therein, I feel it my duty to have the whole truth set before you. *Purchasers* of public stock owe the stockholders no other duty than

the common duty of being good citizens. Not so with the *sellers* in this case; they were directors, and became possessed of the power to control the bank principally by using its funds to buy up a majority of the stock. Whether this was right or wrong is not now the subject of inquiry; but it was certainly wrong to dispose of the control of the bank thus acquired to any person, and especially to an *unknown* purchaser, without consulting the stockholders, whose money they had been thus diverting from legitimate banking to the acquisition of such power, and whose funds were thus to be set adrift, without compass or chart, while their own stock was most carefully withdrawn, and a *bonus* or premium of \$84,000 obtained for the exclusive benefit of the selling directors. I say, this was most certainly wrong. When I first heard of the sale, which was first mentioned to me by B. F. Butler, esq., who had accidentally heard it in Wall street, I exclaimed: 'If Jacob Barker had done this, the world would ring with his infamy.' Now, gentlemen of the jury, I do not mean to say that the professional or other men concerned in this sale supposed they were doing wrong—such a thing never entered their heads. Their whole life, and the faithful discharge of their judicial and official duties in the situations which some of them have so long and faithfully filled, forbids such a supposition; but they were deluded and captivated with the boon held up to their view, and a profit of \$84,000 by a single bank speculation could not be resisted. They had heard of Lawton's, of Prime's, and of Garniss' splendid speculations, and wished to figure a little in the financial world; and, having studied 'Coke upon Lyttleton' more than they had 'Smith's Wealth of Nations,' they considered only their legal rights over the stock, forgetting at the moment their duty to the widow and orphan, of whose rights they had become the legal guardians. So bent were they on securing the prize, that about the very day of the election they distrusted the commissioners appointed by themselves to superintend the election, and, without any fault on the part of those commissioners, ingloriously dismissed them, and appointed others more likely to consummate their wishes. One of their own number resigned his seat as a director for the purpose of becoming one of those inspectors, and absolutely performed the ceremony in such a manner as the Supreme Court has since passed condemnation upon. Yet most of these men escape the notice of the district attorney further than to be brought here to aid him in the unholty work of destroying me for daring to tell them of their errors, and for having, as before stated, protected all the institutions entrusted to my care.

"The district attorney, in his efforts to find something to my prejudice, has not left any stone unturned. He sent an officer to bring a sick man from Flushing to say that I had told

him last October or November that I considered the Life and Fire bonds good, that I repeated the same thing to him in April or May, and that I was profiting by their purchase and supposed he could not do a better business, and not that I offered to sell him any, either as principal or agent.

"If the district attorney had asked me, I would have admitted that I should, had I been consulted, have expressed every day in the year the same strong confidence, down to five days prior to the failure of the company. That was my opinion; and I have never been known to disguise or withhold my opinion on any subject. Mr. Nevins has also been called to say the same thing. To me it is astonishing, considering the pains the district attorney has taken, that he could not find more than two persons to say that I had intermeddled further with this branch of the business. Much stress is laid on the terms I used to convey the confidence I felt. These two witnesses say, I said I knew; I have no recollection of having used that word; I meant to convey the most implicit confidence, and may have used it, but I never did intend to convey the idea that I had any other knowledge than that derived from the representations of the officers of the company. I believed, and yet believe, they were all sincere in their representations, and I cannot think myself culpable for confiding therein. Neither witness intimated that they supposed I meant anything beyond what I have here stated, nor do I believe such a thought ever entered their heads; neither purchased in consequence of my recommendation; neither lost by the bonds; neither complains of being defrauded. And what better proof can you have that no evidence can be found against me, than the shifts to which the district attorney resorts in collecting together these straws and feathers 'light as air,' on which to erect a fabric of guilt? My principal offence appears to have been in inspiring confidence by *purchasing*, not selling those bonds. Are not Colonel Fish, his broker, and all other purchasers alike chargeable with the same sin, if a sin it be? No one thinks of indicting, much less of convicting, either of them for a conspiracy because they purchased and paid for those bonds, any more than they do of indicting or convicting David Clarkson, or the numerous persons who had Fulton Bank stock transferred to them, which they advanced money on, sold, paid for, or purchased, as best suited their pleasure or convenience. Thus, what is considered perfectly innocent in others, is to be considered a crime in me.

"I beg you to remember, that all my transactions with the Life and Fire Company have been of the most simple character, down to the day of the failure, when they appointed me their attorney in fact, to make certain collections for them. Since then, my conduct has not been called in question. First, I lent them

money. Second, I sold for them 1,500 shares Fulton Bank stock, the account of which, the district attorney was pleased to say, he had not the least doubt was correct, when he introduced it as evidence. And I did, at the instance of one of their directors, Mr. Rathbone, give an obligation to deliver Mr. Gouverneur five hundred shares Tradesmen's Bank stock, which obligation was promptly fulfilled. It was given in consequence of the Western Company (in which I was an officer) having advanced on eight hundred shares, for which they had not settled with Mr. Rathbone, and which it was not convenient for them at the moment to return. Here you have all my connexion with the Life and Fire Insurance Company, and I would ask you to say, in the sincerity of your hearts, if I had not a perfect right to do all these things, without subjecting myself to the charge of impropriety of conduct or intention.

"Several witnesses testified that I had been in the habit of regulating the price of the bonds of the Life and Fire Insurance Company; but, on being cross-examined, they all admitted that they only meant that the extensive purchases made by me disappointed them in a portion of the profits they would have got had I not been a competitor in the market. Hence the hostility of the fraternity of brokers. An attempt was made to enlist your prejudices on account of the indignation manifested by me at the boy being sent here from the Morris Canal and Banking Company to requite me for saving that bank from ruin. And if I should put my threat, to dismiss that bank from Wall street, into prompt and full effect, who would blame me? Should I not be performing the duty of a good citizen? Has it not been abundantly proved that they are conducting a banking business in Wall street in open violation of the laws?—thus depriving the State of a tax paid for the privilege of banking by all the incorporated institutions in this State.

"Mr. Wetmore stated that Messrs. Brown and Spencer told him that Mr. Eckford and myself had promised to loan the Hudson Insurance Company \$100,000; that the agreement was reduced to writing, but that he had not seen it. Let the agreement be produced before any bad faith is ascribed to me. Every promise made to those gentlemen was honorably fulfilled; and I defy the district attorney to produce a single witness who shall say that he ever heard Mr. Spencer impute to me any want of compliance; and, surely, after the disclosure, no one will pretend that \$100,000 would have saved the two companies.

"Murray Hoffman, esq., a receiver appointed by the chancellor to receive the effects of the Life and Fire Company, stated that that company were indebted to me \$130,000, of which \$98,000 had been lent without discount or commission; and that the said company were indebted \$80,000 or \$90,000 to the Mercantile Company,

and \$50,000 or \$60,000 to the Western Company; and he confirmed all my statements about the securities received. And is there a man on earth that would not have obtained pay or security for such large debts if he had an opportunity of doing so?

"Mr. Mitchel, and many others, will prove great and complicated employments, and the most faithful conduct. I say these things that you may see that others besides the Life and Fire Insurance Company have deemed me worthy of the most extensive agencies.

"Thaddeus Phelps testified that Samuel Hicks, J. & C. Bolton, and himself, had been employed in 1823 to negotiate a loan of \$200,000 or \$300,000 for sundry persons at New Orleans; that they had endeavored to obtain it from Messrs. Costers, Prime, Hones, and others, but that all their efforts were unavailing; that application was made to Mr. Barker; that he required a fee of \$5,000; it was paid him; he undertook the agency, was successful, and most completely satisfied his employer, whose confidence in him remains undiminished.

"The district attorney endeavored to make R. L. Nevins say that he had reasons for thinking I knew about the affairs of the Life and Fire Company, when he expressly swore that he had not any other reason for thinking so than the freedom with which I purchased the bonds, and the confidence I expressed in their goodness.

"It has been attempted to urge as a crime the high fees I charge. Let it be remembered that it has been proved that I work at any time, and at all times, for my acquaintances when required to do so, without price or pay, and with equal zeal and fidelity, as if I were to receive the highest commission. And let it be always remembered that every man has a right to fix his own price on his own property, and that a man's faculties are his property, as much as his horse, or his barrel of sugar. It is the very law of our nature to require pay for our labor. No one has been invited to employ me; and those who have were told my terms at the commencement, and not surprised into a large claim after the service had been performed.

"At length out comes a mighty volcano, which is to envelope and burn up the *life* of these defendants without *fire*. 'The bonds have been ante-dated for the purpose of concealing this stupendous fraud,' said the district attorney. 'Those issued only last May and June are dated in 1823.' Tremendous! Only think of the bonds being ante-dated. But, gentlemen of the jury, allow me to remind you of the facility with which I put all his squadrons to flight in relation to the matter, by desiring the witness to turn over a few pages of the Life and Fire books, and tell you the history of those bonds thus ante-dated, when it turned out that the Life and Fire had issued to Jacob Barker, as agent for William Kenner & Co., of

New Orleans, on the 5th September, 1823, a bond for \$2,000, payable in three years. That Jacob Barker held it until May, 1826, when he returned it to the office and took in exchange for it two bonds, each for \$1,000, bearing equal date with the original bond, and payable on the same day that it became payable; and it is hardly necessary for me to tell you that nothing is more common in the mercantile world than when a note is found too large, to have it divided, preserving the original date and time, and would it be fraudulent to return a hundred dollar bank note to the bank that had issued it, and take in lieu thereof two notes of fifty dollars each, or one hundred one dollar notes, because these new notes bore the same date with the one hundred dollar bill given in exchange for them?

"Gentlemen, my losses in foreign business, together with the money due from the government, were the causes of the misfortunes of the Exchange Bank in 1819—since that time I have labored, and that too with great success, for the payment of the debts of that bank, and of the Washington and Warren Bank. The debts of the latter were all paid, and its credit re-established more than two years ago, and the Exchange Bank notes are nearly all redeemed from my new earnings.

"Gentlemen, if I am to be convicted, I pray that it may be for something you understand; that you do not allow a mystery so wrought up to induce you to infer fraud on account of such mystery. I have been denominated a mysterious man, the most mysterious man of the age. It has been so published in the daily papers. Prejudicial as such a character may be, there is to be found in it food, delicious food for the vanity of man, for we all delight to be thought to possess great intellectual powers, and so great a share of vanity has fallen to my lot that I would plead guilty to that charge if I was to be the only sufferer. But as it may operate against the other defendants as well as all those connected with me by blood or feeling, I cannot consent to feast alone on that delicate morsel, knowing as I do that no one else can share with me in its delusive enjoyment. Therefore, gentlemen, I deny, boldly deny, that there is any mystery about me, and I put it to you to decide whether every thing that has come out has not been of the most frank, open, and candid character. Has there been the least appearance of trick, artifice, or device in a single one of the many transactions which have come under your notice on this trial? Have I not told every witness to tell all he knew, as well as all he believed? Has not my conduct throughout sustained the first declaration I made, 'let every thing come out, if I have been guilty let the world know it.' History tells us that the Quakers were once put to death in our own country, on account of the mysteries of their religion, and that in all ages religious sects of

every denomination have, in turn, fallen victims to the dominant church on account of the mysteries of their religion. Every thing not understood by short-sighted men was considered as evidence of an evil spirit, and made the pretext for putting the innocent and the unoffending believer to death, for the single reason that he attended to the manifestations of truth in his own mind.

"Now, I trust in God, that those days of darkness and delusion, those days of murder and rapine, have passed away, and that they are not to be brought back in this enlightened age, and under our happy form of government, when it is our pride and boast that the human mind has been emancipated, and that reason and justice reign triumphantly as well in our courts of law and justice as in our legislative halls and sanctuaries of religion. Again, I repeat, if I am to be convicted, let it be for something you understand, and not because the district attorney may so envelope in mystery and darkness any particular transaction that you cannot clearly see its purity.

"My negotiations have been with Mr. Eckford. I am not conscious of meriting the censure of any one, but on the contrary, consider myself entitled to the praise of 'well done, good and faithful servant.' Be that as it may, I hope that Mr. Eckford will not be made to suffer for any errors of mine, if errors there have been. If so, it will be more painful to me than all I have suffered or may suffer.

"And here I beg leave to ask who is Henry Eckford? Is he a needy adventurer? Is he a stock speculator and a schemer? No, gentlemen, he is a man who, by his mechanical skill, industry, and enterprise, has raised the character of our country. Within the last year he has built, fitted out, and equipped four sixty-four gun ships. He has been the means of bringing nearly two millions of dollars into this country; not, gentlemen of the jury, the fruits of stock jobbing and other speculations, but of honest industry. It has been earned by the hewer and feller of timber, the ship carpenter, the smith, and artisans in general. This money is the fruits of such enterprise as no mechanic has ever before displayed. In his case you have heard of no exorbitant commissions, no disputes with agents, no quarrels with foreign governments, no refusing to settle differences, nor any compromise by which one ship was to be sacrificed for the other. Who, I ask again, is Henry Eckford? He is the same who, during the late war, when the storm howled along the frontier, built our fleets, those fleets which led to victory, and covered the nation with glory. This is the man, gentlemen, whom it is sought to immolate. And who, gentlemen of the jury, may I be allowed to ask, is Jacob Barker? He is the man who, (and it is a matter of historic record,) during the darkest periods of that war, furnished the sinews of that war. He furnished the money without

which those fleets could never have been equipped; without which the army could not have been fed or clothed, and without which even the bounty to the recruits could not have been paid. It was not all his own money, gentlemen, but when the rich and fearful drew close their purse strings, Jacob Barker, by the exercise of that talent for which he is here arraigned, brought capitalists together, and effected arrangements by which five millions were cast into the treasury. Such was Jacob Barker during that memorable period—such is the man who has now been arraigned here by a combination of rogues, who would run away by the light of the funeral pile upon which they would be happy to see him consumed.

"Whether the conspiracies alleged in the bill of indictment have taken place or not, or whether the frauds have been committed or not, has nothing to do with my defence so long as I had not the least participation therein. Hence it follows that the district attorney must request you to acquit me without leaving your seats, or he must expect you to convict me for having sold 1,500 shares Fulton Bank stock for account of the Life and Fire Insurance Company, and accounting therefor to the satisfaction of all parties; for having, as the assistant president of the Western Insurance Company, advanced money on 800 shares of Tradesmen's Bank stock, and given them back in exchange for other securities, at the instance of the persons for whom they were received; for having, in the most honorable manner, effected the most salutary change in the direction of the Fulton Bank; for having, by the loan of all the money I could raise, endeavored to save from insolvency the Life and Fire Insurance Company; or for having preserved from failure the Morris Canal and Banking Company, and also the Fulton Bank. This I aver to be what I have done in the premises, and that there is not a particle of testimony to connect me with any of the frauds complained of, nor could there with truth have been any such evidence, as I had not the least connexion therewith. But you have seen other conspiracies on the part of my accusers brought to light in the course of this tedious investigation, viz :

"To get possession of the Morris Canal and Banking Company, through the instrumentality of the \$40,000 post note of the Phoenix Bank.

"To cheat me more than once in the appointment of directors for the Fulton Bank.

"To apply the funds of the bank to the private purposes of the two presidents.

"To induce me to loan money to a company known to be insolvent.

"To palm off on me Fulton Bank stock to a ruinous amount at 80, by some of its directors and their associates, after they knew of the recent losses of the bank.

"To procure my conviction at every hazard, that I might be disqualified from giving testimony against the guilty offenders.

It was now ten o'clock, when Mr. B. informed the court that he was very much exhausted, and asked an adjournment. The court refused, saying his argument must be closed that night. Mr. Barker replied that he wished time to collect his thoughts, and would stipulate not to occupy the court more than ten or fifteen minutes at its opening in the morning. The court replied "Your argument must be closed this night," when Mr. Barker resumed, saying:

"This detail might be extended much further were I not restricted in time.

"To David Leavitt, principally, am I to charge this indictment. He has followed me like a demon; he waited at the jury-room till I was denounced; he produced all these books and papers; he has stood forth and said that I defrauded the Fulton Bank, knowing that there had been no fraud in my transactions, that I had saved the bank from failure; he sits at this moment at the elbow of the district attorney, and whispers him what question to ask; and with a keen eye he watches the progress of this case, as the mother watches the unfoldings of her babe."

Benj. F. Butler, esq., made a very lucid and logical closing speech; among other things, he said:

"It is known to you gentlemen of the jury, that I was introduced into this cause, and have hitherto appeared in it as one of the counsel associated in the defence of Mr. Eckford; my learned associates will render him all the aid his case requires, and with his consent I have yielded to the request of Mr. Barker to present his case; you will therefore consider me as addressing you exclusively in his behalf, and you will consider him in thus committing his defence to a junior counsel, and that counsel a stranger, as giving the highest evidence he could give of his confidence in the justice of his cause, and in the intelligence and impartiality of those by whom it is to be decided. In that confidence, I can truly say, I fully participate; yet it would be affectation to deny that I enter on the duty assigned me with the liveliest solicitude. Not that I have found anything in all that mass of testimony that has been laid before you to shake my faith in the innocence of my client. No, 'tis neither the evidence nor the learned counsel by whom it is to be enforced that I fear. I have other and more formidable antagonists. Rumor, with her ten thousand tongues, and prejudice and calumny are all arrayed against my client. Interested men—men who have been disappointed in their hopes of gain, brokers, bondholders, and stockholders, all, all have united in a crusade against him. It has suited the purposes of certain individuals, whose names and motives have been dragged to light in the

course of this investigation, to charge on Mr. Barker all the evils of a financial nature that have recently fallen on this community. By open maledictions, or insidious appeals to the worst passions of our nature; by the most extravagant tales concerning his connexion with the companies that failed, and the profits alleged to have been realized therefrom; by exciting the jealousy of the suspicious, and the hatred of the ignorant, they hoped to bring down upon his head a storm of popular indignation that should desolate him in its fury and destroy him forever. To a considerable extent their efforts were successful. The multitude of bondholders and stockholders involved in the recent failures, was more or less imposed upon by the artifices I have mentioned, and with *them* the clamor became too general.

"Emboldened by their success without doors, the leaders of this conspiracy had the audacity to pursue, even to this sanctuary of justice, and within these sacred walls, their intended victim. Yes, gentlemen, availing themselves of occasions when the honest public was excluded, and when this hall was filled with the prosecutors, witnesses, and others equally interested in the conviction of the defendants; and governed by the same spirit that inflames the ferocious savage, when he utters the yell of triumph in the ears of a foe, prostrate at his feet, or bound to the blazing tree; they dared, once and again, in a manner the most reprehensible, to interrupt the solemnities of this trial, and to exult in the anticipated martyrdom of my devoted client, in the vain hope that you could be overawed by such nefarious attempts.

"Gentlemen, I know that you cannot be influenced by such exhibitions; but, at the same time, I frankly confess to you, that I am not without my fears that the prejudices and passions that rage without, may find their way into this jury box. When I say this, let no one of you understand me as distrusting his judgment or his integrity. I have the most unlimited confidence in both. I perceive you to be intelligent, and though a stranger to all of you, I believe you to be upright. I know you will make a great effort to rise above all extraneous considerations; and such is the trust I repose in your love of justice, that I am persuaded, if you should once suspect that your minds were about to become the prey of prejudice, you would expel the demon from your bosoms, and fly, as it were with horror, from your very selves. But, alas, you were created men, before you were appointed to be jurors, and he knows but little of the human heart, who does not know, that prejudices the most unfounded and pernicious may be entertained in ignorance, and even cherished as virtues. You will, therefore, bear with me, my friends, when I tell you that I have but one lingering apprehension for the safety of my client, and that is, lest you should unconsciously imbibe the poison that has been so widely diffused; and you will join me

in supplicating the Father of Lights, that he may guide your deliberations, and arm you against error, and save you from prejudice; so that in discharging the awful trust, which in his Providence has devolved on you, you may imitate—though at infinite distance and with much imperfection—his own unerring and impartial justice!

"In the course of my remarks I shall endeavor to guard you against some of those considerations which are most likely to mislead; but there is one against which I feel it my duty to warn you at the very outset. An idea has gone abroad, that stupendous frauds have been committed in the recent failures of your monied institutions, and that public justice demands the punishment of some one.

"But however this may be, it is obvious that these vague impressions that wrong has been committed, and this thirst for vengeance, is calculated to operate, in a thousand forms, to the great injury of whosoever may chance to be accused as the author of that wrong; and in no way more effectually, than by inclining judges and jurors to regard the prosecution in a favorable light.

"Attempts have already been made, and they will doubtless be repeated, to impress it on your minds that this prosecution is entitled to your favor; and lest you should chance to have imbibed such an impression, I beg to direct your attention to the motives in which it originated, to the form in which it has been preferred, and to the mode in which the public prosecutor has attempted to sustain it. A brief consideration of these three topics, will enable you to determine how much encouragement it should receive at the hands of an honest jury.

"1. The motives in which it originated. To discover these we should know the names of the persons who made the accusation to the grand jury. In that country from which we derived our jurisprudence, no man can be put on trial without a copy of the indictment and a list of the witnesses by whose oath it was obtained. This salutary practice is, in this State, too generally neglected. It has not been adopted in the present case. We must, therefore, select the instigators of this proceeding from among the prosecutor's witnesses. Of the witnesses called by the district attorney many—such, for example, as Mr. Catlin, Mr. Nevins, Mr. Fleming, and others—had no connexion with the institutions alleged to have been defrauded, but were produced for the mere purpose of proving independent facts nowise suspicious in themselves, and never till now the subject of complaint. They were not the prosecutors. Others were connected with the defendants, or some of them, by the ties of friendship or of business. They also were not the prosecutors. Now, when you select from the witnesses on the part of the prosecution those who belong to the two classes I have named, all that remain have either strong per-

sonal enmities towards some or all of the defendants, or are deeply interested in the institutions alleged to have been defrauded, or in the employment of those institutions, or have lost money by those that have failed. Let us run over the list: Mr. Crane, secretary of the Mechanics' Company; McCulloch, the worthy commissioner of the Morris Canal Bank, who would convict his brother commissioners as conspirators for doing that which his own conspiracy rendered necessary; Mr. Gilchrist, cashier of the Morris Bank, and several of its directors; Mr. Cheesebrough, who has long had his difficulties with two of the defendants; Leavitt, the president of the Fulton Bank; Sprague, his clerk; St. John, the youth who was sent here by Clarkson and Reed; Clarkson and Reed themselves; Falls, the cashier of the Tradesmen's Bank; the pugnacious Mr. Dyatt, and the whole corps of bondholders and stockholders. Some, or all of these, it is reasonable to infer, are the real complainants. Without their oaths the prosecution could not have breathed an hour. You see, then, that the substratum of this prosecution has been laid by the testimony of witnesses under the double bias of personal animosity and private interest. But you will be told that all criminal proceedings are to be commenced by the complaint, and generally to be supported by the oath of the party injured. This is true, and when the prosecution springs from a real desire to advance the cause of justice, the public good requires that you should act, though even then with caution, on the evidence of those whose property or whose persons have been the subject of depredations. But the present is no such case. It is the offspring of feelings, motives, and designs altogether personal. Many of the witnesses have shown this by their testimony or their conduct whilst under examination. As to McCulloch, Leavitt, Sprague, Dyatt, and several others, this was too palpable to escape your observation. As the bondholders, one and all, I risk nothing in asking you whether there is one of them who, if he could have obtained his money, though at the expense of every other creditor, would not gladly have taken it and remained quietly at home, without dreaming of conspiracies or appealing to public justice.

"2. I request your attention to the form which has been given to this prosecution. Unless I am deceived you will find it such as to demand your unqualified condemnation. To enable you to understand it I must detail the facts. On the 12th of August last the grand jury presented an indictment against Messrs. Eckford, Swift, Rathbone, and Vermilyea, for conspiring to defraud the Morris Canal and Fulton Banks. That indictment was founded on the fraud alleged to have been committed in the exchange of stocks, one of the principal subjects of the present investigation. The defendants appeared, pleaded, and

demanding an immediate trial. A trial was promised, but was deferred by the court from want of time and the pressure of business. On the 15th of the same month an indictment was found against the four persons just named, together with Messrs. Spencer and Brown and the cashier of the Morris Bank, Mr. Talman, for a conspiracy to defraud the Morris Canal Bank and the Fulton Bank. This indictment was founded on the same transactions as the former. On the same day, or the next, an indictment was found against John Franklin and Messrs. Eckford and Vermilyea, for a conspiracy to defraud the Mechanics' Insurance Company, embracing the same subject matter, so far as that institution is concerned, that is now the subject of enquiry. A *fourth* indictment was presented against Messrs. Spencer and Brown, together with Leggett and Oakley, clerks in the Fulton Bank, for a conspiracy to defraud that institution by those *overdrawings*, of which you have heard so much in the course of the present trial. And by the same grand jury a *fifth* indictment was preferred against Mr. Davis, in conjunction with Messrs. Reed, Gouverneur, and Cox, for a conspiracy to defraud the Tradesmen's Bank, in the various transactions which have been given in evidence before you. All these indictments are yet pending and untried.

"Thus you perceive, gentlemen of the jury, that every branch of the present accusation had been made the subject of separate prosecutions before the present indictment was preferred; and that all the parties now on trial, with a single exception, had been charged in one or other of the proceedings I have mentioned. That exception, however, did not spring from any favor on the part of the public prosecutor—it was my client, JACOB BARKER. Another grand jury was summoned, and such was the increase of prejudice, or of testimony, that he who in August was untouched by a single accusation, was indicted in September as a party to all the conspiracies charged in *five* several indictments! But mark the course of the public prosecutor. Instead of finding five new indictments and including in each the name of Jacob Barker, *one general indictment* is found against him and his seven co-defendants, comprehending not only all the conspiracies embraced in the former prosecutions, but adding to the institutions alleged to have been defrauded the 'Life and Fire, and the stockholders thereof.' Under this last indictment, the defendants have been required to answer in the gross for all the transactions they have had for the last three years with either of the institutions enumerated; and that, too, whether jointly, singly, or in pairs, with each other, or with parties not on trial.

"This form of prosecution is not only extremely inconvenient, but, in my judgment, was adopted without necessity. The defendants, with the exception of Mr. Barker, could

have been tried under the former indictments. If there was ground to charge *him*, new bills could have been preferred, and his name inserted in each. If there was ground to charge the whole eight, their names could have been inserted in each bill. In either case their trials would have been confined to acts affecting some particular institution; each trial would have been kept within moderate limits as to time; and justice might have been administered impartially, understandingly, and without embarrassment or doubt. The course pursued, on this occasion, was not only unnecessary, but unprecedented. Let the counsel for the prosecution produce its parallel if they can. Let them ransack our judicial records from the earliest period of the common law to the present hour, and they will find none. No, not even in the days of Jeffreys, nor among the Irish state prosecutions.

"You may think this but idle declamation. Advert then, I beseech you, to the evils that have flowed from the blending together of so many subjects of accusation. It has protracted this trial to a length hitherto unparalleled in this State. It has plunged us into an ocean of evidence, through which none but a skilful pilot can steer in safety. No human memory, unaided by notes, can retain the details of the testimony you have heard. Your situation would not permit you to take notes, and you are therefore obliged to rely on memory, or the statements of others. With all the helps you may receive, with all your circumspection, there is great danger that you may err. It is the prerogative of heaven to review the complicated acts of a busy life, and to determine of the whole, whether it demands punishment or reward. Man can only judge of separate transactions; and the rule that forbids multifariousness in judicial proceedings, is not only intended to promote the attainment of truth, but is rendered indispensable by the imperfection of our nature. This mode of prosecution has also subjected *you* to a severe trial. The interests of the defendants, being, in most cases, really distinct, and sometimes in opposition, they were obliged to employ separate counsel, who have worn out your patience, even in the necessary discharge of their duties. Nor is this all; Mr. Barker has omitted to call more than thirty witnesses, who were summoned, but not examined, lest he should prolong your imprisonment, and render insupportable the privations you have suffered. The defendants have also been deprived of their constitutional right to call each other as witnesses, in regard to many of those transactions which are now the subjects of accusation. But two of the defendants, Messrs. Eckford and Vermilyea, are implicated in the fraud alleged to have been practiced on the Mechanics' Company. Brown and Spencer are the only persons now on trial, who are implicated in the overdrawings of the Fulton Bank; but then there is not a particle

of evidence to connect them with the Morris Canal, the Tradesmen's Bank, the Mechanics' Company, or the Life and Fire. As to all those subjects, they may have known facts of vital importance to their co-defendants. If the transactions connected with the several institutions alleged to have been defrauded had been separately examined, as they ought to have been, those of the defendants who were not affected by the testimony would have been acquitted at once, and might have been called as witnesses for the others. By linking them together in the present indictment, and including in that indictment so many distinct transactions, this has been prevented; because there is no one of the defendants who is not affected by some portion of the evidence. Once more—by coupling together these eight defendants, they are brought to trial for the acts they have really committed, under such circumstances as necessarily to be prejudiced by the acts of others. Mr. Barker had no connexion whatever with the Mechanics' Company, nor with the overdrawings of the Fulton Bank, and yet he is to answer for his own sins in conjunction with the sins of others. We read in classic fable, of a tyrant who bound together the living and the dead, and buried both in one common grave. This prosecution proceeds on the same principle, but its cruelty is more refined. The crime of the despot was not cloaked under the pretence that *both* were dead; but when your verdict shall have bound together the guilty and the innocent, the record will make you say, and say upon your oaths, that each was guilty of defrauding *all* the parties, political and natural, named in the indictment. Yes! if you convict my client, the record will make you say, that he conspired to defraud the Mechanics' Insurance Company, when you know in your consciences, that in that respect, at least, this indictment is untrue.

"Thus, gentlemen, you perceive that I spoke not lightly, when I complained of the form which had been given to this prosecution. Why these parties were put upon trial at the same time, for so many distinct acts, it is not for me to say. Was it done to prevent them from calling each other as witnesses, and explaining what is now said to be inexplicable? I hope there was no such motive. Was it done in the belief, that by connecting together a thousand distinct transactions of various hue, some innocent and some doubtful, the good, the bad, and the indifferent; was it hoped, that by blending all in one undistinguishable mass, you might be induced to say of the whole lump, it is *bad*, and fit only to be condemned? Was that the object? Or was it hoped that the defendants, goaded on by their desire to protect themselves, or jostling amid their conflicting interests, might mutually contribute to the ruin of each other? Was this the charitable motive?

"3. I pass to the third topic I proposed to discuss—the manner in which this prosecution has been attempted to be sustained. I mean not, in this place, to enter into details. I only intend to call your attention to some of the prominent features of this trial—features of strong mark, which give character to the cause. And first of all, I remind you of the females, some of them clad in the habiliments of woe, that were brought here to tell you of their losses as bondholders or stockholders of the Life and Fire. Why were these respectable persons dragged from their firesides, their domestic avocations, their children and their friends, and kept in this hall from day to day, till, in the order of the proofs, it suited the convenience of the public prosecutor to call them to that stand, and to receive from their lips the story of their sufferings? Shall I be told there was any necessity for this? There is no man who will dare to utter such a declaration. Why then was it done? There could have been but one motive. It was to enlist against the defendants those sympathies of our nature—the best and purest that have survived the fall—which flow out spontaneously when we see woman in distress; which prompt us to fly to her relief; and without inquiring how or why, to ask but *who* has done it, and then to avenge the wrong. Have we not a right to complain of this as cruel? Was it not enough that the defendants had been charged with guilt, and pursued by public prejudice even to this last refuge of the oppressed? Was it right that mothers should be made to teach their children the story of that guilt, ere it was established by the verdict of an honest jury? Or that such a verdict should be sought for, by exciting the sympathies, and rousing the indignation of our judges? This is not all. To sustain this prosecution the friends and confidants of the accused have been called upon to testify, in the hope that by violating the confidence reposed in them, they might contribute to the ruin of their friends. Fortunately for the defendants, they knew nothing to their prejudice, and the effort was unavailing. But what are we to think of the cause that requires such a support? Confidence is the golden cord that binds society together. Destroy it and man becomes a hermit, and the world a solitude. Never should a fibre be severed but from imperious necessity. This case presented no such necessity. Or if it did, as to Mr. Halleck and some others, what shall we say of that rude invasion of the domestic hearth, which dragged to this bar the orphan niece of one of the defendants? Which called on her to reveal the secrets of the family in which she found an asylum, when both her parents were hurried to the grave? Is there anything in all those accumulated charges which are heaped on the defendants, I do not ask to justify, but even to excuse, this attempt to extort from the

lips of one so circumstanced, evidence against her friend and benefactor, her more than father.

"Gentlemen, when I witness such an example of the power of prejudice; when I see that even the greatest minds are fated to bear its yoke, I could weep over the frailty of man's nature. And I assure the public prosecutor, that what I have said on this point has been said in sorrow and not in anger. But I tell him to his face, and in the presence of this great audience, that if he should succeed (which may heaven forbid) in sustaining this prosecution, he will have done to the cause of justice, and to this community, an injury for which not all the labors of his past life, useful as they have been, nor all the public services he may hereafter render, can furnish an atonement, for he will have succeeded in establishing a precedent, which, in times of popular excitement, and in the hands of partial judges, may be wrested to purposes the most fatal to private right and public liberty. Which may involve not *eight* but *eighty* in one sweeping charge, and offer up at once whole hecatombs of victims.

"I will not detain you by entering into an exposition of the law of conspiracy. What does and what does not amount to conspiracy will be the subject of discussion on the part of the other counsel, and will be faithfully explained to you by the court; but there are one or two general observations touching the law of this case that I cannot omit

"I refrain from entering into the discussion, because Mr. Barker has enjoined me to manage my argument in the same liberal and fearless spirit in which he conducted his defence; and, above all things, he has commanded me *not to rest his cause on any technical ground.*

"This injunction, I can assure him, I mean faithfully to obey; but as a sworn defender of the law, as a freeman and a lover of my country, I cannot suffer a principle so reasonable in itself, so necessary to the safety of the citizens, so indispensable to the due administration of justice, as that involved in this objection, to be trampled down in any cause in which I am concerned without raising in its behalf the voice of warning and remonstrance. And I beg to assure my client, and you, also, gentlemen of the jury, that this is no technical objection. It stands on grounds of right, reason, and eternal justice. That no man shall be put on trial for one offence and convicted of another; that he shall not be held to answer for a crime against which he is not admonished to defend himself; these are among the most obvious principles of that law which has been written on the heart of man by the hand of his Creator. They are, therefore, to be found in the penal code of every State that pretends to a rational jurisprudence. They are among the chief ornaments of our boasted common law, and, with the invaluable right of a trial by one's peers, create the difference between a trial in

New York and one at Madrid or Algiers. Heaven grant that neither you, nor I, nor our remotest posterity, may outlive their application in this favored land of liberty and law.

"But I perceive that my client is impatient, whilst I thus linger at the threshold. He likes not these distant approaches. He would have me attack the enemy in his strong holds, and would risk the issue on an open contest. I go then to the evidence in the cause, and shall examine in detail all that relates to Mr. Barker. And if He who is the author of reason shall only enable me to express with clearness the conceptions I have formed of this evidence, I hope to satisfy you that not a fact has been proved which can warrant you in believing that Mr. Barker ever intended, either separately or in conjunction with others, to defraud any one of the parties named in the indictment. In doing this I am aware that I shall trespass largely on your patience. But I cannot help it, my client has friends who love him, not only in every part of the union, but in every quarter of the globe. Wherever commerce has her patrons, those are to be found who take an interest in his welfare, and who wait with breathless solicitude the issue of this trial. They shall know that if condemned he was not condemned unheard. If acquitted, your vindication and his shall accompany your verdict.

"To reduce the mass of evidence that has been offered to a manageable shape, I shall take up the corporations and individuals named in the indictment in the order in which they are enumerated. I shall apply to each as I proceed all the evidence that touches Mr. Barker, but shall not comment on that which relates to the other defendants.

"*I. The Mechanics' Insurance Company.*—The facts relied on to show a conspiracy to defraud this company relate exclusively to John Franklin and Messrs. Eckford and Vermilyea. I will not enter into the discussion of those transactions, for Mr. Barker had no connexion with either. He was never a director or stockholder of the company; he has had no dealings with it. After the consummation of the alleged frauds, and after the failure of the Life and Fire, it is in proof that the Life and Fire handed over to him, among other claims, one against the Mechanics' Company, which is now in suit. If it is a just claim they ought to pay, and the court will see that they pay to the proper party. If it is not a just claim they will be protected against it, and indemnified for the expenses of their defence. Perhaps I ought not to have detained you by alluding to a matter which evidently has nothing to do with this cause. But as every part of Mr. Barker's conduct has been exposed to misconstructions, I do not know what may be said of this, and I can suffer nothing to pass unnoticed.

"*II. The Morris Canal and Banking Company.*—It is said that this institution was defrauded:

"1. In the apportionment of the stock by the commissioners.

"2. In the withdrawing of the capital paid in by the discounting of stock notes, &c.

"3. In the paying out of \$15,000 for procuring the charter.

"4. In the issuing of the certificates for 2,500 shares of stock transferred to the Fulton Bank as full stock, which certificates are said to have been false.

"5. In the loan of \$10,000 to the Dutchess Company.

"I waive all discussion as to the four first topics, for there is not a particle of proof to connect Mr. Barker with either of them. And, in addition to this absence of proof against him, there is positive testimony that he was neither an applicant for the bank, nor a commissioner, nor a subscriber, real or fictitious, nor a stockholder, director or committee man. Till the affair of the \$10,000 loaned to the Dutchess County Insurance Company his name was not mentioned by any of the witnesses. This was put forth by the district attorney as a fraudulent transaction, and, I take it for granted will again form a topic of crimination. Let us see what it amounts to: It is admitted that the money was repaid, but the charge is that it was procured by Mr. Barker without security, through the agency of Vermilyea, and remained some time without interest. All the evidence before you in regard to this transaction is the memorandum of Mr. Talman, the former cashier, and the testimony of Newton St. John, Mr. Gilchrist, and Mr. Halleck. The memorandum of Talman simply states that \$10,000 had been lent to Jacob Barker by T. Vermilyea—\$5,000 on the 29th of April, and \$5,000 on the 11th of May. This memorandum, it may be proper to state, is not evidence against Mr. Barker. Young St. John says that Vermilyea directed the \$10,000 to be sent to Mr. Barker; and that he (St. John) took the money, or a part of it, to the office of the Dutchess Company; that he there saw Mr. Barker, who pointed out Mr. Halleck, the secretary of the Dutchess, as the person to receive it, and that he paid it to that gentleman. He further testified that he never saw Mr. Barker in the Morris Canal Bank; and that he does not know that Mr. Barker had any thing to do with the money except from the statements of others and from what passed in the office of the Dutchess. He added that the money was returned about the 20th of July, principally in the bills of the Morris Canal Bank. and that was all the young gentleman knew upon the subject. Mr. Gilchrist, the present cashier, had no knowledge upon the subject except that the money had been repaid. Mr. Halleck told you that the Dutchess County Insurance Company, some two or three months before the 20th of July, received \$10,000 in Morris Canal bills on loan from Mr. Vermilyea; but whether he brought them in person or sent part by a boy he did not recollect. That on or

about the 20th July, Mr. Vermilyea, accompanied by Mr. Talman, came to the office of the Dutchess, and requested that the money might be repaid to the Morris Canal Bank, and that he thereupon paid over the amount, chiefly in bills of the Morris Bank to Mr. Talman, in the presence of Vermilyea. He added that no application had previously been made, either by Mr. Vermilyea or the bank, for the money; and that Mr. Barker had no interest in the loan except as a stockholder and officer of the Dutchess. Thus you perceive that there is no evidence to impeach the fairness of this transaction. Whether security was given by Mr. Vermilyea to the bank, or by the Dutchess Company to Vermilyea, does not appear. Nor is it material. The Dutchess Company was always able to repay it at a moment's warning. It was promptly returned on the first call; and as to the trifling amount of interest, about which so much clamor has been made, if any interest was justly payable to the bank by the Dutchess, it can be deducted from the \$5,000 now owing to that company.

"I have been thus minute in stating the testimony concerning this transaction, because, strange to tell, it was much insisted on by the district attorney. Neither the cashier nor any of the directors complained of it in their testimony; indeed, they all said they knew of no fraud committed by Jacob Barker upon their bank. But of what avail is their united tribute to the innocence of my client? The district attorney has denounced the act as fraudulent, and young Mr. St. John has told us that, in his opinion, it was *dishonorable*! Who shall doubt the justice of their decision?

"This affair of the \$10,000 was the only transaction of Mr. Barker's that was specified by the district attorney, in his opening speech, as a fraud on the Morris Canal; but he asserted that Mr. Barker had an intimate connexion with its concerns, and that many other circumstances would come out in evidence to show the fraudulent nature of that connexion. I have carefully examined the testimony, and I find but three other facts to connect Mr. Barker with that company. They are, first, the application for a loan made to him by Mr. Bayard; second, his agency in effecting the return of the 2,500 shares of Morris Canal stock; and, third, the loan of \$5,000 to the bank.

"As to the application made by Mr. Bayard—that gentleman, who was the assistant president of the bank, called on Mr. Barker on the 21st of July with a hasty note from Mr. Eckford, stating that the bank was in distress, and begging his assistance; that they wanted \$25,000; that they would offer him securities, and that he (Mr. Eckford) would guarantee to the amount of \$10,000. This was strange evidence to support a conspiracy. But the district attorney had an object in offering it. He desired to fix on Mr. Barker the charge of

extortion; and he proved by Mr. Bayard that the former talked of taking the notes at a discount of 30 or 33 per cent., which the latter was unwilling to allow; and thus the negotiation was, therefore, broken off. Motives of delicacy restrained Mr. Barker from repelling this charge by calling for the names and condition of the parties to the notes, but he did it with equal effect by asking Mr. Bayard whether he did not state his willingness to furnish the \$10,000 which Mr. Eckford had offered to guarantee at a moment's warning, and upon lawful interest? You heard his answer in the affirmative, and you required nothing further on this point.

"The agency of Mr. Barker in the return of the 2,500 shares is not complained of as injurious to the bank. On the contrary, it is admitted on all hands that if the return of this stock had not been effected the bank would have been ruined. And Mr. David B. Ogden, a director of the Morris Canal, charged with the negotiation on their part, testified that Mr. Barker had conducted the negotiation with great skill, fidelity, and success. Any agency, therefore, that he may have had in this transaction, instead of furnishing evidence to criminate him, should entitle him to the thanks of the institution; unless, indeed, the district attorney was correct in asserting as he did, in his opening speech, that the stock was not returned till after the complaint to the grand jury, and then only because 'they feared the penalties of the law.' I cannot suffer this observation to pass unanswered; it is important to notice it for the purpose of enabling you to form a just estimate of the character and motives of Mr. David Leavitt. It is also in proof, then, that the negotiation for the return of the 2,500 shares was not completed till the 10th day of August, when it was closed at the office of Mr. David B. Ogden. It is also in proof that a complaint was then pending before the grand jury, which resulted in a bill—the first of the series. It is also true that Mr. Leavitt, who represented the Fulton Bank, had been before the grand jury prior to the closing of the negotiation; and when it became necessary, for the purpose of consummating the arrangement, to deliver up the certificates of the 2,500 shares, Mr. Leavitt stated to Mr. Eckford that the certificates were at the Fulton Bank, and left the office of Mr. Ogden under the pretence that he would go to the bank and obtain them. He was gone two or three hours, and, when reproached for the detention, he for the first time informed the gentlemen that the certificates were in the hands of the grand jury and could not be obtained; and the business was, therefore, closed without their delivery. Till this disclosure by Mr. Leavitt neither of the gentlemen with whom he was negotiating had any reason to suspect that the matter was in the hands of the grand jury. All this is in proof.

But we have something further. You heard David Leavitt admit, on that stand, that when he left the office of Mr. Ogden under the pretence that the certificates were at the bank and that he was going thither to procure them, you heard him acknowledge, with his own lips, that he *then* knew that the certificates were in the hands of the grand jury, and that he *intentionally concealed the fact from Mr. Eckford, Mr. Barker, and Mr. Ogden.*

"I make no comments on this fact. It is enough to state, that whilst David Leavitt was negotiating with Henry Eckford as an honorable man, he was plotting the ruin of his character and the destruction of his peace!

"But Mr. Barker claims a commission of \$5,000 for his services in this negotiation, the payment of which is to be resisted by the bank. Whether he is right or wrong in demanding this commission, is really irrelevant to the present inquiry. Even if his conduct, in this respect, was fraudulent, it would be no evidence of a conspiracy. In all the new law that this trial has furnished, it still seems to be admitted that the union of two or more minds is essential to a conspiracy; and this is an affair that relates exclusively to Mr. Barker. Yet it is my duty to place it before you in its true light. The facts are simply these. After the failure of the Life and Fire Company, there was much excitement among the persons interested in the Morris Canal Company, and among the holders of its bills, on account of the 2,500 shares exchanged with the Life and Fire Company. David B. Ogden, esq., one of the directors, had two or three interviews with Mr. Eckford, in which he pressed the return of the stock. The latter respectfully declared that he would see the stock returned, but he declined binding himself by a written engagement to do so immediately. Mr. Barker was present at the last interview, having, at the request of Mr. Eckford, accompanied him to Mr. Ogden's house, for the purpose of explaining the effect a written guarantee would have on the stock market. The reasons he assigned were solid and forcible. The Morris Canal stock had been exchanged with the Fulton Bank, and could not be liberated without returning the 2,000 shares of Fulton Bank stock, or making some other arrangement with the Fulton Bank. Mr. Eckford had engaged to return the Fulton Bank stock on the 1st of March, 1827, but had not contemplated an earlier return. It was apparent to Mr. Barker, that the attempt to procure, on a sudden, 2,000 shares of Fulton Bank stock would enhance the price of that stock—expose Mr. Eckford to extortion—and perhaps defeat the very object in view. Mr. Ogden felt the force of these objections, but so pressing were the necessities of the Morris Canal, that he continued to urge upon Mr. Eckford the immediate return of the stock. The latter, though under no obligation to do this, was willing to make the attempt, and placing a just

confidence in the skill of Mr. Barker, appealed to him as the person who should undertake the negotiation with the Fulton Bank. Mr. Barker replied to this appeal, that he would do anything for Mr. Eckford, but would not work for the Morris Canal without pay. Mr. Ogden asked what he would charge that company for his services? He demanded \$5,000. Mr. Ogden tells you that he thought the terms rather hard; but he at length engaged, if the result was successful, to use his exertions to induce the bank to pay the stipulated fee. Mr. Barker was too wise to leave the matter on this footing. He therefore suggested that Mr. Ogden should procure the sanction of the directors. The board was accordingly called, and a resolution passed authorizing Mr. Ogden to take such measures as he thought proper to effect the return of the stock. After this, being again urged by Mr. Ogden, Mr. Barker opened the negotiation with the Fulton Bank, and prosecuted it with his accustomed perseverance until the desired end was accomplished, and the Morris Canal saved from the ruin that threatened it. In the meantime, however, Mr. Leavitt had informed the directors of the Morris Canal of Mr. Barker's offer to relinquish his commission of \$5,000 in favor of the Fulton Bank. As Mr. Ogden had not thought it good policy, at that stage of the business, to communicate to his fellow directors the details of the arrangement with Mr. Barker, this information was a surprise to the board, and laid the foundation for the difference that now exists between them and Mr. Barker in regard to the commissions.

"I have now given you a plain history of this transaction as it appeared in the evidence, and I should like to know what there was in it that was wrong on the part of Mr. Barker? Was he bound to save the Morris Canal Company without compensation? They were the parties chiefly interested, and he had a right to insist on a *quid pro quo*, before he devoted to their use his time, his funds, or his talents.

"Mr. David Leavitt, however, who has a special desire to protect the Morris Canal and every other institution, when he can do so to the prejudice of Mr. Barker, has volunteered a new objection to this charge, by which Mr. Barker is not only to be deprived of his compensation, but convicted of bad faith and perhaps of fraud. He has sworn that Mr. Barker 'did not effect the return of stock; that he commenced the negotiation, but flew from his agreement, in consequence of which he (Leavitt) requested Mr. Eckford to employ some other agent or negotiate the business himself, and that thereupon he and Mr. Eckford closed the business themselves.' This statement is entirely destitute of truth. Out of Mr. Leavitt's own mouth, aided by the testimony of Mr. Emmet and other unimpeachable witnesses, I will convict him of falsehood. It is painful to make such a charge, but I shall place it past doubt

or cavil. And it is important to do so at this stage of the cause, for the purpose of testing the accuracy and credibility of Mr. Leavitt. You said then, Mr. Leavitt, that Jacob Barker 'did not effect the return of the stock, and that the negotiation was closed without his agency.' Who opened the negotiation with the Fulton Bank? *Jacob Barker*, by his letter of the 31st of July. Who conducted it until the 9th of August, inclusive? *Jacob Barker*. When did you tell Mr. Eckford that you would no longer treat with Jacob Barker? On the 10th of August. When and where was the negotiation finally closed? On the 10th of August, at the office of David B. Ogden. Whom did you see on that day at that office with Mr. Eckford? *Jacob Barker*. Who waited two or three hours with Mr. Eckford when you went for the certificates, the same certificates which you said were at the bank, when you knew them to be in the hands of the grand jury? *Jacob Barker*. Who, when the certificates could not be produced, and you supposed that the whole negotiation must therefore be broken off, and went with your counsel to Mr. Ogden's office to explain this to Mr. Eckford, who, I again ask, proposed the mode of closing the arrangement without them? *Jacob Barker*. Who delivered the five hundred shares of Fulton stock and the one hundred shares of Morris Canal stock, in part execution of the arrangement? *Jacob Barker*. What then remained to close the business? Securities were to be delivered for \$50,000. Who gave you these securities, Mr. Leavitt? *Jacob Barker*. These answers are taken, mark it, gentlemen, from the testimony of Mr. Leavitt himself, drawn out by Mr. Barker on his cross-examination. But the efficient instrumentality of Mr. Barker in closing this negotiation does not rest merely on the admissions of Mr. Leavitt. All the testimony on this point concurs in representing Mr. Barker, not only as the person who commenced and managed, but who closed this difficult and important negotiation. Mr. David B. Ogden swore that Mr. Barker did effect the return of the stock. Mr. Emmet testified that he was present as counsel for the Fulton Bank, at the close of the arrangement, and that '*Jacob Barker took a very active part in the business.*' He also confirmed the admission of Mr. Leavitt, that when the lawyers were at fault, (and able ones they were too,) in consequence of the non-production of the certificates, Mr. Barker, with that readiness and tact of which you have seen so many striking examples during this trial, suggested the expedient that was finally adopted for closing the business without them. And yet Mr. Leavitt had the temerity to swear, that Jacob Barker did not effect the return of the stock.

"But I have not done with this gentleman. He stated that '*Jacob Barker flew from his agreement, and that he therefore declined any further negotiation with him,*' &c. On his cross-

examination, Mr. Barker showed a resolution purporting to have been passed by the directors of the Fulton Bank, on the 9th of August, by which they agreed to the terms proposed by Mr. Barker in behalf of Mr. Eckford, provided the assent of Spencer and Brown was obtained, and provided also that the directors could be satisfied in regard to another matter specified in the resolution. He then asked Mr. Leavitt whether this resolution was not passed by the board; to which he answered first in the affirmative, but afterwards doubtingly; and he turned to the book of minutes, which was in proof, and told us there was no such resolution entered in the minutes. On being pressed by Mr. Barker, he admitted that the paper shown him was in the handwriting of one of the directors, and had been approved of by several; and that he had no doubt it had been delivered to Mr. Barker as a resolution of the board. He further admitted that the two points reserved were adjusted to the satisfaction of the board, and Mr. Barker notified thereof; that Mr. Barker was willing to deliver the securities in conformity to the resolution; that he (Leavitt) then called the board together, that all the directors except the president (David Leavitt) voted in favor of receiving the securities and delivering up the Morris Canal stock agreeably to their engagement with Mr. Barker; that a motion was then made to reconsider, which prevailed; and that a resolution was thereupon unanimously passed rescinding the prior resolution, and breaking off the negotiation. Thus far Mr. Leavitt. Messrs. Jonathan Lawrence and Richard M. Lawrence, two of the directors, both testified that the unentered resolution was unanimously passed on the 9th of August; that they and other directors delivered it to Mr. Barker as the act of the board; that they at the same time informed Mr. Barker that a committee had been appointed to inquire as to the two points reserved; that they did so, and that those points being satisfactorily disposed of, Mr. Barker was notified that the directors would meet forthwith to consummate the arrangement agreeably to the terms of the resolution; that the board did accordingly meet, when, to the astonishment of themselves and their brother directors, Mr. Leavitt alone voted in the negative; whereupon, suspecting that he intended to cast upon them the responsibility of the measure, one of them moved a reconsideration, which passed, and which was followed up by a resolution rejecting the whole negotiation. This, gentlemen, was the 'flying from his agreement,' of which Mr. Leavitt spoke, and which he falsely charged on Mr. Barker.

"You see that it was David Leavitt and not Jacob Barker who broke faith on that occasion; and I confess to you I know not which is most reprehensible, the audacity of Mr. Leavitt in attempting to palm off this statement upon you, or his treachery to his brother directors. Look at it, gentlemen of the jury. He first

agrees to the unentered resolution of the 9th of August. His brother directors, believing that he is to share in the responsibility of the measure, take the necessary steps to carry it into effect—everything is arranged in conformity with its terms—but at the last moment, he alone, without deigning to assign reasons for his conduct, interposes his veto. The motive was too palpable to be misunderstood. Mr. Leavitt wanted a loophole through which to crawl, in case the stockholders should complain of the arrangement as improvident; considerable excitement about the measure having by this time been created out of doors among the stockholders. In that event his protest would enable him to say 'It was not I who did it.' But Mr. Lawrence and the other directors had too much sense and too much spirit to be caught in the snare. They therefore broke off the negotiation, and compelled Mr. Leavitt to resume it in proper person. Ashamed to meet Mr. Barker, he applies on the same day or the next to Mr. Eckford, and wanting some excuse for this step, he resorts to the pitiful expedient of charging on Mr. Barker the failure of the contemplated arrangement, and affects to be unwilling to treat with him any longer. And for the purpose probably of concealing the facts, the original resolution was withheld from the minutes, although, a copy was officially served upon Mr. Barker, which ought not to have been done until it had been recorded. The rest you know."

[The cause went to the jury after a most inflammatory speech on the part of the district attorney, full of eloquence, full of sound rules that ought to be observed in all well regulated communities, but an entire misstatement of the little testimony which he condescended to notice, and, in fact, had scarcely any reference to the case under consideration, but it had its effect, and the jury could not agree. They were equally divided, and having, at the commencement, disagreed upon some cardinal points, they, although kept together nearly a week, never descended into particulars so as to form an opinion how far any one individual was, more than another, implicated in the matters submitted to them. They early communicated to the court that they could not, and would not, agree, to which they adhered with remarkable pertinacity, and were discharged at the end of about a week.]

During the trial, Mr. Barker, in his cross-examination of David Leavitt, pressed him very close. The district attorney interfered, and an appeal was made to the court; it expressed great dissatisfaction at the remarks made by Mr. Barker to the witness, and said that when the trial should terminate, he must appear and answer for those expressions.

Accordingly, Mr. Barker, the moment the

jury were dismissed, without waiting to be called to account, rose and stated that he presented himself before the court, in obedience to their requisition, and was amenable to their directions if they were still of the same opinion as to the examination of David Leavitt.

Judge Edwards said that the circumstances had warranted the course pursued by the court; Mr. Leavitt was on the stand, and a question was put by Mr. Barker, of which the court required an explanation, as its relevancy was not clearly perceived.

Mr. Barker said he intended to impeach the witness; Mr. Leavitt then asked if he intended that he should impeach himself? Mr. Barker answered, that he had done so already, in his opinion; now, to the court, this declaration appeared highly offensive, and a departure from the respect due to the rights of the witness, and to the dignity of the bench.

Mr. Barker disclaimed all intention of disrespect to the court; said that the recorded testimony of Leavitt established that he had sworn false, knowing it to be false; that he could, by other evidence prove it to be false, and that he knew it when he gave his testimony; that if the court would permit the examination, if he failed to establish these facts he would make ample apology to Leavitt, but that he would not make any apology to a man obnoxious to the charges he made against Leavitt.

The court said, this examination cannot take place, the question is not as to the accuracy of Mr. Leavitt's testimony; the court will adjourn, take the case into consideration, and meet to-morrow morning, when they will decide what atonement will be required.

The court adjourned, met the next morning, the judge addressed Mr. Barker respecting the grounds on which the displeasure of the court had been founded, saying: The insult to Mr. Leavitt could not be passed over; the court is satisfied that you did not intend any disrespect to it, and yesterday you had an opportunity of making satisfactory explanations in relation to Mr. Leavitt, which you refused to do.

On the stand, you impeached him while under the protection of the court, and for this offence, you have, as far as the witness is concerned, offered no atonement, but rather confirmed the accusation; for this offence the judgment of the court is, that you pay a fine of

one hundred dollars and stand committed until the same is paid; the smallness of the sum arises from our having taken into consideration the peculiar situation in which you were placed when you made the objectionable declaration, conducting your own defence, without the aid of counsel.

Mr. Barker, smiling, turned to one of his clerks who was in court, and said: "Go to Wall street and bring me a hundred dollars in those yellow bags." They were immediately brought, and paid into court.

The day previous a ship arrived from Mexico with two hundred thousand dollars in Mexican doubloons, being a portion of the securities pledged by Mr. Eckford for moneys borrowed for the use of the Life and Fire Insurance Company.

Elisha Williams, esq., in his speech to the jury in defence of Mr. Eckford, stated that "Leavitt had, by his own testimony, driven the last nail in the coffin of his own reputation."

A second trial took place—that of Eckford and Rathbone—being held over by the district attorney, who then said they would be tried at the proper time, and subsequently that Rathbone had rendered the State some service, and therefore he would not be tried; that he was regenerated but not disenthralled.

Observe, not "disenthralled;" had he been he could be examined as a witness; and it is not perceived what other reason could have induced the district attorney to withhold a *nolle prosequi* from a man who was not to be tried, who had paid the price of his emancipation in the fraudulent use of those miserable scraps, those "wooden daggers," in themselves as harmless as the sweepings of a barber's shop, with which the district attorney imagined he could create a delusion, a mystery, operating on the minds of the jury to Mr. Barker's prejudice.

A new jury was empanelled, composed of men many of whom were hostile to Mr. Barker personally—one of their number a director in the North River Bank, against whom he had preferred the charge of fraud. Most of them admitted, when challenged, that they were prejudiced against the defendants in relation to the matters to be tried; yet they were admitted by the court as jurors in the case,

although challenged and resisted by the defendants to the utmost of their capacity.

After the evidence for the prosecution closed Mr. Barker spoke thus :

"Gentlemen of the jury : I do not think you are such a jury as was contemplated by the framers of our happy Constitution, who provided that every accused citizen should be tried by an impartial jury ; that men who had prejudged the case, as most of you on oath admitted you had done, cannot, in my opinion, be legally considered an impartial jury. No man on earth can be expected to admit that, if he finds himself, by new testimony, in error, he is not open to conviction ; if not, is it sufficient for you to say, what every man might say, that he considered himself equal to the mighty task of conquering his own opinions and rendering an honest verdict ? All we look after, when listening to testimony, is for such things as will support and harmonize with our previously expressed opinions, not for an excuse for the conduct of the accused, not for circumstances that will induce us to give up unfavorable opinions formed, and to reconcile affairs in themselves of doubtful appearance with fairness, with candor, and with integrity. As lamentable as this is, I venture to pronounce it a true picture of the human mind. If you are in judgment of the law an impartial jury, why are grand jurors and relations considered otherwise ? I have taken a juror's oath ; I then considered my mind, as to the case to be tried, like a clean sheet of paper, ready to receive an entire new impression ; but not so with yours. These defendants have a twofold service to perform ; they have first to remove a very deep impression already made before there is any room for another ; the two cannot exist at the same time, our duty is therefore a very hard one. The law presumes every individual innocent until he is proved guilty. You have taken upon yourselves this trial, presuming the defendants guilty ; you, therefore, are at variance with the law. Now it can never have been the intention for the law and the jury to be at variance. I admit the odds is vastly against us, and I feel thankful that I have been favored with fortitude and philosophy sufficient to come here and breast the storm, unaided by counsel or friends. But I come so strongly armed that I fear not ; my shield is justice, through which not one of the poisoned arrows of the conspirators could penetrate—they have all fallen harmless at my feet ; I will pick them up and hurl them back on my accusers. I took courage at the recollection of those memorable words of our dying naval hero, Lawrence : 'Don't give up the ship'—words that should be written in letters of gold, and placed in our public squares on imperishable monuments, where all coming ages may read them, and improve by their courageous moral.

[“Turning to the district attorney he requested to see the *wooden daggers* furnished by Alderman Rathbone, describing the papers alluded to. Two or three were furnished. I want another of a deeper hue than either, said Mr. Barker ; when another was furnished.] This is it on which I have written a memorandum, which is as pure and harmless as the act of furnishing it is vile. It is a contract, in the handwriting of Alderman Rathbone, and dated the 10th of May. It sets forth that Mr. Eckford had borrowed from Messrs. Spencer and Brown 2,000 shares Fulton Bank stock, in exchange for 2,500 shares stock in the Morris Canal and Banking Company ; promising to exchange back, at his option, at any time prior to the 1st of March next. This contract was signed for H. E., W. P. R. ; and on its back is a memorandum in my handwriting in these words : ‘As fast and in such proportions as I deliver the Fulton Bank stock.’

“Nothing can be more harmless, more innocent, than every part of the transaction, so far as described in this agreement and in this memorandum ; it is a simple exchange of stock, an every day transaction. Nobody has, nobody will dare to say that it was wrong ; but if the stock had been fraudulently obtained, or if the certificates were false, all parties to the transaction who knew of such frauds, or either of them, would be guilty. Now, as I knew nothing of either, and had not, at the time, the slightest reason to suspect that anything was wrong, there was no wrong on my part. Not so with Rathbone ; he was a director in both banks ; he procured the stock from the Morris Canal ; he knew whether or not it had been paid for ; and if the certificates were false he knew it. The question that this memorandum presents is, Was the memorandum to form a part of the within contract, or is it a separate contract, intended to be signed by some other person ? The district attorney read the signature to the agreement Henry Eckford and William P. Rathbone, and not for Henry Eckford, William P. Rathbone, as he should have done, which makes the memorandum ‘I,’ being written in the singular, appear not to belong to the contract ; and, in the absence of all proof, my handwriting is to be considered as indicating a separate condition on my part, connecting me with the whole transaction. This error might have been to me fatal ; and if I had not had the capacity or good fortune to have detected it, I must have suffered.

I will now, gentlemen of the jury, unveil to your view a nefarious attempt to sacrifice an unoffending man. In the absence of Mr. Eckford, Mr. Rathbone called at the office of the Mercantile Insurance Company, and presented to me this paper, drawn up by his own hand, dated and signed before I saw it, and asked, as the friend of Mr. Eckford, if its conditions were clearly expressed. I suggested a slight alteration. He requested me to reduce to

writing the suggested alterations. Not suspecting traps to be setting for me, I did so, on the back of the agreement. Mr. Rathbone took the paper with him from the office, since which I have not seen or heard of it until produced by the district attorney, which circumstance, when taken in connexion with Mr. Rathbone's being let off, forces on my mind the irresistible conclusion, that he has furnished it for the purpose of fixing on me a crime, of which he knew, that I, at least, was not guilty. If roguery there be in the transaction, he is the rogue. W. P. Rathbone, I mean, gentlemen, that man sitting there, [turning and pointing at Rathbone,] to describe the enormity of whose conduct requires powers far beyond my capacity. Another of these notable papers is a very rough memorandum, in the hand writing of Brown, Spencer, Rathbone, and myself, which seems to have reference to a negotiation for a loan of \$100,000, to support the Hudson and the United States Lombard Companies, which took place a few days before their failure; half of which it was expected would be furnished by the Fulton bank, and the other half by Messrs. Eckford and Barker. There was nothing on this paper to connect Mr. Eckford with this transaction, except the hand writing of Mr. Rathbone, who was, *at that time*, the partner of Mr. Eckford; and the only thing to connect Mr. Barker with it was the last memorandum on the paper, limiting the loan to \$1,000 per day, which was surely a prudent precaution, as, if the intended object failed, the obligation to loan would cease; and if the object was obtained, the parties would benefit so much by their collections during the hundred days, that it would compensate them for their great exertions to raise the \$100,000. But so far from the companies meeting their payments as long as Napoleon reigned after his return from Elba, they both failed within one week; and although they got more than \$17,000 of the money, ten thousand times has it been alleged, to my prejudice, that they would not have failed if I had performed my promise. I consider the production of this supposed dagger, although intended for my destruction, a most fortunate feature in the plot, as it frees me, most triumphantly, from one charge; and, although the last I knew of this paper it was in the hands of Mr. Brown, I am not prepared to believe that he furnished it; and nothing can be more honorable to Messrs. Spencer and Brown than the part this negotiation locates on them. The whole object, scope, and tendency, is to borrow money on the best securities they held, for the use of the companies under their management. The next in order is a memorandum in my hand writing, purporting to be a contract, dated the 21st day of July, written for Messrs. Brown and Spencer to sign, for the settlement of the contract of \$61,000 Fulton Bank stock, which was not agreed to or signed by either. The last I knew of this paper it

was in their hands. It is perfectly harmless, except as another evidence of the guilty conspiracy to destroy me. And now we come to the fourth and last of these weapons of destruction: it is a plain contract for the purchase and sale of six hundred and ten shares of Fulton bank stock, dated the 21st of January, which stock I held at the time. What possible use of this contract the district attorney intends to make I cannot image, and therefore will not remark on it. The last I knew of this paper, it was in the hands of Mr. Spencer. The parties now on trial can, and I trust will, satisfactorily explain how they lost possession of them. At present, I am inclined to believe that Rathbone either furnished or was instrumental in furnishing them all; perhaps he borrowed them for the purpose of negotiating for the exoneration of a greater number of the defendants; but as the district attorney could not have found in them sufficient for their ransom, Rathbone, if my conjecture is right, converted the whole to save himself. At these contrivances, as at all my enemies, I boldly hurl defiance, knowing that all the contrivances in the world cannot convert innocence into guilt. Now, Mr. District Attorney, if you have any more papers that bear the mark of the finger of Jacob, let him have them, that he may dispose of the whole pack at the same time.

"Gentlemen of the jury, the district attorney took particular pains, in his opening speech, to draw down public indignation upon me. It was for the public and not you, as he has not followed up his most aggravated allegations with a particle of proof. For instance, he stated that within six months immediately preceding the failure of the Life and Fire Insurance Company, I had, as their agent, palmed off on the community their bonds to the amount of \$300,000, knowing them to be bad; thus leading every bondholder to suppose I had defrauded him of their amount, when it has been proved, over and over again, that I never sold a bond for the company; that I only sold \$10,000 worth, and that they belonged to the Mercantile and Western Insurance Companies, and not to me or to the Life and Fire Company, and that of the person to whom I sold them I purchased a greater amount, and of others to a vast amount.

"Not even an offer, on my part, to sell has been proved, although he has unintentionally proved that I made vast purchases."

The other testimony was much the same as that adduced on the first trial, on which Mr. Barker remarked very much as he had then done, insisting that the public prosecutor had not established either of the charges made against him, and that he was as free from having done any wrong as a new-born babe. The case resulted unfavorably.

On the evening of that day, when surrounded by his family and many sympathizing friends, the bell announced another call, when the servant brought a letter from a gentleman of the first respectability, as follows:

FRIDAY EVENING, *December 1, 7 o'clock.*

SIR: This moment, the writer learns, from Butler's Bulletin, that the jury have returned a verdict of guilty in your trial, with others, for a conspiracy, &c.

You will well know, from his signature, and from his very slight acquaintance with you, that he can have no interested motive in addressing these lines to you. But he cannot resist the impulse to say to you and *your family*, in the hope of in some degree assuaging the feelings which this occurrence must produce, that there is at least one wholly disinterested observer of the recent proceedings—who has given his best attention to the published testimony in both trials—who believes that you are most unjustly given up in this case as a victim to *public prejudice*. This opinion he has uniformly expressed in conversation, and will continue to do so, till cause shall appear for changing his opinion.

"That individual is your obedient servant,

"JAMES BOORMAN.

"JACOB BARKER, esq., present."]

In a very few days thereafter, he was presented with the proceedings of the directors of the Insurance Companies with which he was connected, as follows:

"MERCANTILE INSURANCE COMP., N. YORK,

"12th month, 4th, 1826.

"At a meeting of the directors of this company, on motion of Henry D. Sedgwick, esq., it was this day unanimously resolved, that a committee be appointed to investigate the books and affairs of this company, and the conduct of Jacob Barker thereto, as assistant president, whereupon Benjamin Marshall, Francis Thompson, and Robert H. Bowne, were duly appointed to perform that service."

"12th month, 6th, 1826.

"The board of directors again assembled, when the aforesaid committee made the following report:

"Report of the committee appointed by the directors of the Mercantile Insurance Company of New York, to examine the books and effects of the company, to investigate the conduct of Jacob Barker, in relation to the performance of his duties as assistant president of the said company, and whether or not anything has occurred to diminish the confidence reposed in him by the directors.

"Your committee have carefully examined the situation of the books and accounts of the company, as well as their securities and effects,

and report, that the books have been regularly kept, and a balance sheet made out every month for the inspection of the directors, which, on a comparison with the books and securities on hand, exhibits a correct and concise view of the situation of the affairs of the company, and that the conduct of Jacob Barker, throughout, has been marked with skill and fidelity to the company, and in obtaining payment for the debt due from the Life and Fire Insurance Company, he did not, in the opinion of this committee, do more than he was bound to do in the faithful discharge of the duties of his office. Your committee is of opinion, that if he had done less, he would have been wanting in his duty to the stockholders of this company; and, so far as your committee have been able to discover, nothing has occurred to diminish the confidence hitherto reposed in said Jacob Barker. That the Life and Fire bonds sold by him on the 9th and 10th of June, as testified by John P. Garniss, were the property of this company, sold for their account, and the money received therefor on those days.

"FRANCIS THOMPSON,

"BENJAMIN MARSHALL,

"ROBERT H. BOWNE.

"On reading the report of the committee appointed to inquire into the conduct of Jacob Barker—

"*Resolved, unanimously*, That we approve of and accept the said report, and that the same be entered on the book of minutes of the board of directors.

"*Resolved, unanimously*, That the secretary of this company transmit a copy thereof, with these resolutions, and of the resolution appointing the committee, to each of the stockholders of this company, signed by the president and secretary of this meeting.

"WILLIAM R. THURSTON, *President*.

"THOMAS L. WELLS, *Secretary pro tem*."

"DUTCHESS COUNTY INSURANCE COMPANY,

"*New York, December 6, 1826.*

"At a meeting of the directors of this company, held at the company's office, this day—

"The committee appointed at the last meeting to inquire into the conduct of Jacob Barker, as an officer of this company, and as to the correctness of the reported indebtedness of the Life and Fire Company to this company, made the following report:

"The committee appointed to inquire into the conduct of Jacob Barker, as an officer of this company, respectfully report: That after a careful examination of the published testimony, given in the recent trials, and comparing the same with all the information we could obtain, and with our knowledge of the facts in the case, we see no reason to withdraw from Jacob Barker the confidence hitherto reposed in him by the directors of this company; that

he appears always to have watched over the interests of the stockholders with scrupulous fidelity, and to have used his best exertions for their interest; that the books of the company have been always regularly posted, and a monthly statement uniformly made for the inspection of the directors; and that the alleged indebtedness of the Life and Fire Company to this company, as mentioned in the report published in the newspapers of Judge Edwards' charge to the jury on the late trial, probably originated in mistake, as no such indebtedness exists.

"WILLIAM ISRAEL,
"ABRAHAM BELL,
"JOHN CLAPP.

"The above report being read:

"*Resolved, unanimously,* That the same be adopted and entered on the minutes.

"*Resolved, unanimously,* That the confidence of the directors of this company in Jacob Barker, their assistant president, remains undiminished.

"*Resolved,* That the president and secretary be requested to sign the proceedings of this meeting, and furnish Jacob Barker with a copy thereof.

"A true copy from the minutes.

"STRONG STURGES, *President.*

"F. G. HALLECK, *Secretary.*"

"At a meeting of the board of directors of the Western Insurance Company of the village of Buffalo, held on the 7th of December, 1826, the annexed report was presented by the committee appointed at a previous meeting:

"Whereupon, it was

"*Resolved, unanimously,* That the same be accepted, and that this board fully unite with the said report.

"*Resolved, unanimously,* That a copy of the same, and of these resolutions, signed by the president and assistant secretary, on behalf of this board, be presented to Jacob Barker.

"NATHAN COMSTOCK, *President.*

"A true copy from the minutes.

"THOMAS J. GARDNER,
Assistant Secretary."

"The undersigned, a committee appointed at a meeting of the directors of the Western Insurance Company of the village of Buffalo, to investigate the conduct of Jacob Barker, the assistant president of the said company, respectfully report:

"That his agency in the management of the affairs of this company is marked with fidelity, and his unremitting exertions for the interest of the institution entitles him to the unabated confidence of the stockholders, and is attended with no circumstances calculated to excite a suspicion of that honesty which should characterize mercantile transactions, nor should

this confidence be diminished in the estimation of your company by the recent investigation before the Court of Oyer and Terminer.

"Your committee find that eight hundred shares of the stock of the Tradesmen's Bank were transferred to Seth Sturtevant, a clerk of this company, on or about the 12th of July last, on which a loan was made by Jacob Barker, as an officer of this company, to the Life and Fire Insurance Company, on or about the 14th of July, and that this stock was re-transferred on the conveyance of a mortgage of Thomas Gibbons, received on the 17th July last.

"The manner in which the books and accounts of the Western Insurance Company have been kept is, on examination, found to be highly satisfactory. The monthly exhibit of a balance sheet, which your committee find to be regularly recorded, presents a full and correct view of the affairs of the company, and has always been open to the inspection of every director.

"Respectfully submitted by

"THOMAS RICH,
"JOHN C. MERRITT,
"JOHN S. CONGER,
"P. W. ENGS."

Mr. Barker was so confident that when his case should come before any tribunal beyond the influence which had been exerted in the city of New York for his destruction, that his freedom from offence would be manifest, and that the illegal verdict would be instantly set aside, that it never gave him a moment's uneasiness. Many of his friends were very much alarmed, to all of whom he said: "Be of good cheer, there is no danger." Application was immediately made to the Hon. John Woodworth, judge of the Supreme Court, for relief, who decided as follows:

JUDGE WOODWORTH'S OPINION.

Thomas Vermilyea and others, }
adsm. }

The People. }

"The defendants were convicted at a Court of Oyer and Terminer, held in the city of New York, of a conspiracy to defraud certain incorporated companies and individuals of their goods, chattels, and effects. Application is now made for the allowance of a certiorari, to remove the record and proceedings into the Supreme Court, for the purpose of reviewing the decision of the court below, on a challenge taken to some of the jurors, and also on the ground of fatal variance between the proof offered at the trial and the charges contained in the indictment. As to the latter, I will merely observe that a certiorari removes the record only; and as the evidence produced on the trial forms no part of the record, the writ

would be a nugatory process. In criminal cases, where questions of law arise at the trial, either as to the admission of testimony, or its legal effect when admitted, if doubts are entertained, the facts are brought before this court in the form of a report, or case agreed on; if the objections afford reasonable ground for doubt, the presumption is, that judgment would be suspended until the opinion of the superior court be known. As far as I know, questions of this description have always been submitted to the Supreme Court in that manner. The experience of half a century has not called for any legislative provision to vary this course, or practice, or am I aware that complaints have ever been made, that the exercise of this discretion has been rigorous as respects the accused. On the contrary, it will be found that the cases from inferior tribunals, which have been reviewed, furnish no inconsiderable evidence of the solicitude and tenderness of our courts in allowing even to the greatest culprits the benefit of every legal objection.

"If, however, in any given case, the inferior court should erroneously refuse to interfere, it would afford no ground for a certiorari, because the remedy does not apply to, or reach the error sought to be corrected.

"If a bill of exceptions would lie in a criminal case, the difficulty would be removed, but it is well settled that it does not.

"With respect to the admission of the jurors, I will confine my observations to the case of Andrew S. Norwood. From the affidavits and certificates of the clerk, it appears that Mr. Norwood was challenged for principal cause, and the decision of the challenge referred to the court, without any objection on the part of the district attorney. The specific ground of the challenge was not in the first instance stated. The juror testified that he had heard all the evidence given on the former trial, having been present at it; that he had made up his opinion perfectly on the evidence that the defendants were all guilty, and had frequently expressed his opinion to that effect; upon being inquired of by the district attorney, he stated that he felt no bias or partiality against any of the defendants; that if the testimony given on this trial should appear as it did on the former, he should certainly find the defendants all guilty, and added, that he thought he felt competent to give a verdict according to his oath and the evidence as it should appear.

"The court decided that the juror stood indifferent, and that the challenge was not true; he was accordingly sworn and sat on the trial.

"On this evidence two questions arise, first, whether the challenge forms a part of the record so as to be the subject of removal by certiorari? Second, whether the exception to the juror was well taken?

"The first question depends on this, do the facts constitute a principal cause of challenge? This arises when there is a manifest presump-

tion of partiality; in that case it excludes the juror; but a challenge to the favor, where the partiality is not apparent, must be left to the discretion of triers. The facts relied on generally consist of slight circumstances, respecting which the law has not laid down any certain rule; in such cases the judgment of the triers is conclusive. The question arising on such a challenge is altogether extrinsic of the record. Evidence may be reviewed in a superior court by a demurrer, or bill of exceptions; but neither applies to evidence in support of a challenge for favor.

"The next inquiry is, whether a principal cause of challenge may become parcel of the record, and under what circumstances? If it cannot in any case, it is unnecessary to consider the objection taken to the juror.

"It is laid down in 3 Bac. 766, that 'if a challenge be taken and the other side demur, and it be debated, and the judge overrules it, it is entered upon the original record; and if at Nisi Prius, it appears upon the pitea what the judge hath done, but if the judge overruled the challenge upon debate without a demurrer, then it is proper for a bill of exceptions.' Chitty I. v. 548, recognizes the same doctrine, he refers to Skin. 101, and Hut. 24, it is also said p. 549, that if a demurrer be resolved on either to the array or to the polls, there is no occasion for those circumstances which must attend a demurrer to a plea, such as the signature of counsel, but it is good as soon as agreed on at the bar, and the prothonotaries ought of right to enter it on the record. These cases suppose a principal cause of challenge, and establish the proposition, that where the facts alleged as cause of challenge are not disputed, the question is decided summarily by the court. On the argument before me, the attorney general conceded the law to be, that if the challenge was good for principal cause, and the other party demurred, it became parcel of the record and might be removed; he contended, however, that this was not a challenge of that description, that the facts made out a challenge for favor, and that the judge was substituted in the place of triers by consent of parties, and consequently that the question was to be viewed in the same manner as if it had been actually decided by the latter.

"If it should turn out that the defendants have not established a principle cause of challenge the argument is well founded. The real difficulty, if any exists, is in ascertaining whether the public prosecutor is to be considered as having demurred to the challenge. The proceedings in this stage were somewhat informal. The more regular course would have been to have stated in the first instance the facts relied on for cause; the prosecution would then, probably, have elected to plead or demur. It seems, however, that the juror was challenged without specifying the cause, and the question referred to the court. What was referred to

the court? The juror was examined; there was no dispute about facts; when that happens in the case of a principle challenge, as well as in that for favor, triers are appointed. The court were called upon to pronounce the law to decide whether the facts made out a principle cause of challenge; or, in other words, whether they are sufficient to exclude the juror. I admit, if the facts were only proper to be submitted to triers, in support of a challenge for favor, the defendants are concluded by the decision of the judge; but if *per se* they formed a principle cause they may avail themselves as such. A demurrer is an admission of the fact, submitting the law arising on that fact to the court. On a demurrer to a challenge no strict technical form seems to be required. Have not both parties conceded that the testimony of the juror was true? And have they not called on the court to declare the law arising on that testimony? Will it be denied that this is in substance a demurrer? Or will it be gravely contended that because the party may not have said in terms he demurred to the challenge, but submitted to the court whether it was sufficient in point of law, that therefore a substantial difference exists between the two cases—that the one shall be entered on the record and shall be subject to review, while the other is final and conclusive? I cannot persuade myself that the rights of any party are held by such a tenure, and, particularly, in a criminal case where there is no remedy by bill of exceptions. I am, therefore, of opinion that the judge having been called upon to decide whether the challenge was valid in law, it is in substance the same as if the party had demurred in express terms. If viewed in the light of a demurrer, it becomes parcel of the record, and is liable to be removed by certiorari. That the counsel for the defendants considered the decision on the challenges as subject to the revision of a superior tribunal, and did all that was deemed necessary to secure that right, is apparent from the fact alledged in the affidavit of Mr. Hoyt, who says that the defendants' counsel requested the court to take down the testimony as to the competency of the jurors, in order to give the parties the benefit of reviewing the decision, and that the presiding judge upon such request read over the notes of evidence, and corrected the same in some particulars on the suggestion of the defendants' counsel. It is, however, contended that this case falls within that part of the doctrine laid down by Chitty and Bacon, where it is said that if the challenge is overruled without demurrer, on being debated, the objection may afterwards be made the subject of a bill of exceptions; and as no bill was taken, the decision could not be brought before the Supreme Court unless by consent. It seems to me this rule does not apply in criminal cases. Whether the counsel demurs to the challenge, or merely argues that it is not good in law, creates no

material distinction. If the distinction was ever entertained in the English courts it must have been founded on a belief that a bill of exceptions would lie. But if it be a conceded point that no bill of exceptions will lie, I think it goes far to show that the rule laid down is not applicable to criminal but civil cases. I have traced the doctrine to its source by examining the cases laid down by Chitty. They are to be found in Skinner 101, Hut. 24. The case from Skinner was decided 35 Charles II, between the king and the city of Worcester. It was an information in the nature of a *quo warranto*. The case states that the counsel for the city of Worcester came with their bill of exceptions; they challenged the array because the venire was returned as by both the coroners, when, in truth, but one of them returned it. They likewise challenged the polls, for want of freehold, which was overruled. No question was raised whether a bill of exceptions would lie. Saunders, chief justice, said if the judge overruled the challenge upon debate without a demurrer, then it is proper for a bill of exceptions. There are several answers to this case if pressed on this application. The case in Skinner was not strictly a criminal proceeding. Informations at the common law partook of the nature of a civil remedy, and in modern times are considered as a civil remedy only. It must, I apprehend, have been so considered by the court, otherwise a bill of exceptions would not have been suggested. This is evident from the fact, that prior to the 35th of Charles II, the judges in England had expressed an opinion on this point.

"In the cases of Sir Henry Vane, reported in Keelyn 15, 2 St. Tri. 443, 14 Car. 2, a construction is given to the statute, and held by all the judges, that the statute of W. 2 C. 31, which gives the bill of exceptions, extends only to civil causes and not to criminal. Keelyn states that the court agreed, the words of the statute are as plain to this point. So, also, 1 Keb. 324, where the same case is reported, the judges observe a bill of exceptions is not within the statute, or ever heard of, the statute not extending to any indictment. This case having been decided before the case of Skinner, it is manifest the court had no reference to criminal proceedings when speaking of a bill of exceptions as applicable to a challenge disposed of without demurrer. As a civil remedy, it may, undoubtedly, be pursued if there is no demurrer to the challenge in form; but even then, in a civil case, its necessity may well be questioned, as will presently be shown. The case then leaves the principle untouched, that where the judge decides the law on a principal challenge, whether arising on demurrer or by a submission of the question, an entry is made on the record, which may be reviewed.

"The decision in Skinner, upon which Chitty and Bacon rest, is an authority to prove there is a remedy where a good cause of challenge is overruled; it is an admission of this principle.

The public prosecutor cannot be compelled to demur; shall his refusal or omission deprive the accused of a right? can the right depend on such a contingency? I think not. In accordance with this view of the subject, it seems to me the case of *Hesketh vs. Braddock*, 3 Burrows, 1347, decided on a writ of error, proceeded. The record states that the defendant challenged the array, to which the plaintiff demurred; the challenge was disallowed. The defendant then *ore tenus*, in open court, challenged the polls, because the jurors were citizens and freemen of the city of Chester; the challenge was disallowed, and thereupon the issue was tried, and a verdict found for the plaintiff. The Court of King's Bench considered the validity of the challenge, and passed upon it, as parcel of the record; there was no suggestion by the court or counsel that the challenge to the polls was improperly brought up; the challenge to the polls was not demurred to, but it was disallowed. On what principle did it become a part of the record? Manifestly because the decisions of the court upon it was substantially the same as if a demurrer had been filed in form.

"In 3 Woodesen, 357 N. in the form of the record in the case from Burrow is given. The challenge to the polls is thus entered: 'And hereupon the said S. B. *ore tenus*, in open court challengeth the polls, because he says that the jurors are citizens and freemen of the city of Chester; which said challenge by the court here is disallowed.' Professor Woodesen states that the challenge *ore tenus* was omitted in the first engrossment of the record; that the defendant alleged diminution; and that it was then inserted by rule. The case sanctions the doctrines contended for by the defendant's counsel, that the challenge may be removed as parcel of the record, provided it was a principal cause of challenge.

"The only remaining question is, whether the facts stated by the juror constituted a principal cause of challenge.

"It will not be denied, that every man, whether in a civil or criminal case, is entitled to an impartial jury. Though our constitution merely preserves the trial by jury inviolate forever, and does not in express terms guarantee an impartial jury, yet *ex vi termini*, it is embraced in its provisions, as much so, as that the judges shall be impartial men. The same general principle is adopted by the English law; the only question is as to the application of that principle. Can a juror be impartial or indifferent to the question, who from a knowledge of the facts, confesses that he has made up his mind that the accused are guilty? It is a fallacy to suppose such a man stands impartial, merely because he has no malice or ill-will against the defendant. This doctrine, however, has been strenuously urged, and cases have been cited, to show that the law is so understood in England.

"The case of the *King vs. Edmunds* and others, 4 Barn. and Al. 170, Chief Justice Abbot observes, that expressions used by a juror are not a cause of challenge, unless they are to be referred to something of personal ill-will towards the party challenging. He relies on the doctrine laid down in the year books, 7 Hen. 6, fol. 25, where Babington, justice, says, 'if the juror has said he will pass with the one party, for the knowledge he has of the matter, and of the truth, he is indifferent; but if he has said so for any affection of the party, he is favorable.' Hawkins, B. 2, ch. 43, S. 28, is also referred to. He observes, 'that it hath been allowed a good cause of challenge, that the juror hath declared his opinion before hand, that the party is guilty, or will be hanged, or the like.' Hawkins adds, 'Yet it hath been adjudged that if it shall appear that the juror made such declaration from his knowledge of the cause, and not out of any ill-will to the party, it is no cause of challenge. The opinion of the Court of King's Bench, in Barn. and Al. rests on these ancient authorities; it does not profess to consider the soundness of the doctrine advanced. Now, admitting the law had been so applied at an early day, when the prisoner did not possess even the right of producing testimony, I apprehend that after the lapse of centuries, when the rights of parties are better understood, and have been more accurately defined, it would not be presumption to inquire whether the common law relative to the right of challenge, had not, in this instance, been misapplied; or whether it was consistent with the law as laid down by Lord Coke, B. 2, 155 a., who says, 'The rule of law is, that the juror must stand indifferent as he stands unsworn.' It seems to be admitted in some of the old cases, that an opinion formed and expressed, is good cause of challenge. Upon what is this founded? On the supposition that it creates a basis. All experience goes to prove the infirmity of human nature is such, that we cannot, at pleasure, get rid of preconceived opinions. The question is not how great is the bias, but does any exist? The least is sufficient to exclude. Can the source from whence it is derived be material? As to the accused, it is the same thing, whether the bias proceeds from a preconceived opinion, or malice and ill-will; be it either, he is equally affected. Why then superadd the necessity of proving malice or ill-will? Without it, the parties do not contend on equal ground, by requiring it to be proved in order to exclude the juror, it only shows the disparity to be greater. If the question was entirely novel, I should think our courts would incline to take a different view of the question. But it has occurred here and has been well considered. The Supreme Court decided in the case of *Blake vs. Millspaugh*, J. John. 316, it was good cause of challenge to a juror, that he had previously given his opinion on the question in controversy between the parties.

The case of *Durree vs. Mosher*, 8 John. 445, is not contradictory; there the juror said, if the reports of the neighbors were correct, the defendant was wrong and the plaintiff was right; no definite opinion was expressed or formed—the court so adjudged, and observed that the declaration was hypothetical. It is no more than saying, if the defendant has done an illegal act, let him answer for it, which is no evidence of partiality. In the case of *Pringle vs. Huse*, 1 Cowan, 432, a juror was challenged for having expressed an opinion against the plaintiff; it was held that this was a principal cause of challenge, and should be tried by the court, and that the juror challenged may be called as a witness. In the case of *Coleman vs. Hagerman*, the same principle was adopted by the Supreme Court. The late chief justice Spencer has furnished me with a manuscript opinion of his in that cause. It was an action for an assault and battery of an aggravated character; the verdict was for four thousand dollars damages. The grounds of the motion were that Graham, one of the jury, had made use of language indicating an opinion that the defendant ought to be exemplarily punished. It appeared that Graham was wholly unacquainted with the parties until after the trial; and that the opinions expressed by him were founded on newspaper publications. He swore that he had no bias against, or partiality for either of the parties, and personally knew nothing of the assault and battery complained of; yet the court unanimously awarded a new trial, on the ground that Graham did not stand indifferent in consequence of the opinions he had expressed. In the manuscript opinion referred to, the late chief justice stated the principles adopted by him, on the then recent trial of Van Anstyne, for the murder of Huddleston. It was thus: if a person had formed or expressed an opinion for or against the prisoner on the knowledge of any of the facts attending the murder, or from information of those acquainted with the facts, he considered it good cause of challenge; but if the opinions of the jurors were formed on mere rumors and report, he decided that such opinions did not disqualify the jurors; and as I understood, the opinions delivered on that solemn occasion met the decided approbation of the Supreme Court.

“The principle upon which these cases were decided was, that any opinion formed and expressed by a juror is of itself evidence that he did not stand indifferent between the parties. I do not perceive how the case before me can be distinguished. On the trial of Fries for treason, before Judge Iredell, on an application for a new trial, one question was as to the competency of a juror who had expressed himself in strong terms as to the prisoner's guilt. That learned judge put the question on this ground, that when a predetermined opinion is formed, from whatever motives, it creates an improper bias extremely difficult to get rid of, and may

influence an honest man unwarily to give a wrong verdict; that he becomes less able to discriminate facts. The reasoning of Chief Justice Marshall, on the trial of Colonel Burr, (vol. 1, pp. 370, 419,) is directly in point. He has shown in the most satisfactory manner that a juror who has given his opinion cannot be considered impartial; that the natural tendency of preconceived opinions in a juror is to obstruct the impartial administration of justice. He asks why a distant relative, or he who has prejudices, cannot serve on a jury? Because he is presumed to have a bias. He may declare that, notwithstanding, he is determined to listen to the evidence and be governed by it; but the law will not trust him. The chief justice observes: ‘Is there less reason to suspect him who has prejudged the case, and deliberately formed and delivered an opinion upon it? The law suspects him, and not without reason, he will listen with more favor to that testimony which confirms, than to that which would change his opinion. It is not to be expected that he will weigh evidence or argument as fairly as a man whose judgment is not made up in the case.’ These enlightened views place the question upon the true ground; not whether the juror feels resentment or ill-will, but whether, for any cause, he has a bias on his mind that may disqualify him from deciding with strict impartiality. I entirely concur in the reasoning of that case as containing a luminous exposition of the ground upon which the rule is founded.

“The result of my opinion is, that enough has been shown to render the decision in the court below questionable; that the challenge forms a part of the record; and that the defendants are entitled to the allowance of a certiorari.”

The reader of the preceding pages will have no difficulty in discovering that the bone of contention in the conspiracy against Mr. Barker has, in addition to the efforts of the guilty to escape by creating suspicions against the innocent, been the securities received from the Life and Fire Company.

A conspiracy was formed, immediately after the first trial, by a portion of the accused and others connected with the incorporations in question, in which transactions Mr. Barker had no part or lot, to shield the innocent and make Mr. Barker answerable for the errors of the guilty. This conspiracy was in part concocted at the house of Josiah Haden. Maxwell there met many of the untried individuals, who were made to understand that, if Jacob Barker could be convicted, Maxwell would be satisfied to let the others off. Mr. Barker, having obtained what he considered sufficient evidence of that conspiracy, went before the grand jury and

made a formal complaint against some of the parties; it was near the close of the session of the grand jury, so that they had no time to investigate the matter. On receiving notice of this fact, Mr. Barker repaired again to the jury room and requested a return of his proofs; Maxwell appearing before them resisted his application, demanding to have the papers delivered to him; Mr. Barker objected, saying to the grand jury that, if they allowed Maxwell to have them, he would not allow him the use of them on his trial; that his object was to protect others at his expense. The grand jury offered to return them to Mr. Barker if he would withdraw his complaint; this he refused to do, when Maxwell insisted on their being filed in court, to be handed to the next grand jury as unfinished business, pledging himself that Mr. Barker should have the benefit of them on his trial; whereupon they filed them in court, to be presented to the next grand jury.

Maxwell followed the grand jury into court the moment they had delivered the papers to the clerk; he took up the bundle, selected therefrom six letters from Mr. Eckford to Mr. Barker, and attempted to leave the court. Mr. Hatfield, the clerk, called him back before he reached the door, that he might take a memorandum of the papers he was about carrying off. He did so; and these letters were never thereafter seen by the court, nor by Mr. Barker, or by the clerk of the court, until after the whole proceedings had been dismissed.

So sacred have the files of the court heretofore been considered, that papers once placed there could not be obtained for the use of any other court, except brought by its authority, and then always accompanied by the clerk, their legal guardian.

Pending the negotiation between Maxwell and the conspirators to let them off if they would furnish evidence to convict Jacob Barker, a lady called at Mr. Barker's house in the night and informed him that she had overheard a conversation of these men, or some of them, when it was stated that they must destroy Mr. Barker or he would destroy them.

The judge having made many errors in stating the evidence to the jury, and Maxwell's published speech being calculated to mislead, Mr. Barker, knowing himself to be innocent,

reviewed the case, and made some remarks about his previous difficulties with one of the jury, and about the manner in which they were drawn, which the district attorney denominated libels and brought two suits therefor. On the trial the ruling of the recorder was such that Mr. Barker took exceptions thereto, the recorder promising to give him an opportunity to have the case reviewed by the Supreme Court; in consequence of which, relying on the soundness of his exceptions, he refused to sum up.

The jury, under an illegal charge from the recorder, sustained the complaint.

Mr. Barker made the necessary statement to have the case reviewed by the Supreme Court; the recorder promised to consider it during the coming vacation. Relying on this promise, and that judgment would consequently be deferred until the decision of the Supreme Court, Mr. Barker made no preparation to meet the case sooner.

On the last day of the term, when but for the aforesaid arrangement it would have been regular for judgment to have been pronounced, the recorder, on going into court, met Dudley Selden, esq., the friend of Mr. Barker, and informed him that, if he had anything to say on the subject of his case, it must be said before one o'clock that day. Mr. Barker was notified thereof, and hastened to the court for the purpose of remonstrating. On his way thither he had the good fortune to meet his friend, Thomas Addis Emmett, esq., who accompanied him to the court and made the following speech:

EXTRACTS FROM MR. EMMETT'S SPEECH.

"Under any other circumstances I should consider an apology due from me for the unprepared state in which I undertake to discuss the questions now before the court. It was not until after the opening of the court this day that I was retained as counsel in this case; and the circumstances of this trial, connected with the facts set forth in the affidavit read to the court, induced me to believe that an argument would not now be required.

"Although unprepared, I hope, from general reasoning upon the law of libel, to be able to satisfy the court that they ought not to suffer sentence to pass against the defendant. The argument I am about to offer to the court I can present with the more confidence, from being able to say, that when I read the testimony and proceedings on this trial in the public news-

papers, and before I was engaged in, or could have anticipated any connexion with this cause, when it passed under my review merely as a common observer, noting it among the occurrences of the day, I was surprised at the law laid down in the course of the trial, and seriously doubted its accuracy.

"Setting aside the particular facts of this case, it seems to me that a rule has been laid down by this court which is matter of vast public concern, and which it behooves us all to examine well, if we would sustain the liberty of the press, and give full and proper scope to the freedom of discussion.

"I need not tell the court that I allude to that rule wherein they have said that malice is not a constituent part of the offence to be passed upon by the jury; and wherein they have also said, that unless the defendant can prove the truth of the libel, proof of the motive with which he published it is not to be addressed to the jury, but to the court in mitigation of punishment, after the verdict has been rendered.

"Can this be law? In a civil action for a libel, malice is the gist of the offence, either to be inferred from the libel itself, or proved from extraneous facts. Much more so in an indictment. I scarcely know—indeed, I may say, there is not in the whole range of criminal law a case, except where an act has been created a positive offence by statute, where the motives of the defendant do not become the subject of proof before the jury. In murder there must be pre-determined malice proved or inferred. Even in manslaughter accidental killing is not enough—there must be proof of sudden passion, or death arising from an intentional wrong of some kind.

"Let me not be understood that the prosecutor must prove malice apart from the libel. The doubt which may arise relative to the proposition which I have laid down is not on account of any defect in the proposition, but in the introduction and application of testimony. Thus, in murder, when it is proved that one man killed another, the jury may infer from proof of the fact and manner of killing, that it was done maliciously, but it will not be urged that the party charged cannot show it was done in self defence. So in libel, the jury may infer from reading the libel itself that the motive of the publication was malicious, and they ought so to infer when it calumniates character without cause and without excuse—yet still the publisher may show from other parts of the publication, and from extrinsic facts, that the publication was without malice and for justifiable cause.

"It may, perhaps, be said that malice is a question of law and not of fact. To a certain extent high authorities may be produced to support and contradict that position, but only to a certain extent; for I believe it never has been maintained except where the defendant

has offered no evidence to establish a justifying excuse. Where he has offered any, that, and with that, the whole matter must be submitted to the jury. But as it is unnecessary to discuss that point, I shall content myself with saying that I think the judges who have considered malice under any circumstances as an inference of law, have confounded *prima facie* presumptions from uncontradicted and unexplained testimony, and therefore conclusive presumptions from evidence, with legal inferences. I do not believe that malicious intention is properly a presumption of law, either in civil or criminal cases; but even if it be, that can make no difference in criminal prosecutions, wherein our system of the law expressly provides that the jury are judges of the law as well as of the facts, and, therefore, in either point of view they are to pass on the intention of the publisher as a constituent part of the offence. Two of the jurors, at different times, clearly expressed their opinions that malice was not imputable to Mr. Barker; perhaps the others thought the same thing. So strong was that opinion, that the jury came in to ask the opinion of the court whether they might acquit the defendant if they thought he had no malice. To which the court replied, by the charge of which I most respectfully but strenuously complain. Suppose the jury had brought in their verdict that Mr. Barker had published the matter set forth in the indictment, but not maliciously, could the court consider this anything but a general verdict of acquittal? At any rate, could the court convict the defendant on it? How then can it be said they have nothing to do with the question of malice or no malice when their verdict negating it would have acquitted the defendant? And can any man undertake to say, that if the jury had not received this explicit or erroneous charge from the court, they would ever have brought in a verdict of guilty?

"During the struggles in England relative to the law of libel, I do not believe that it was ever seriously contended that malice was not at the foundation of the offence. In all the inroads which were made upon the law of libel before, and more especially by, Lord Mansfield and his successors, and to restore which the act of Parliament was passed, the doctrine that the malicious intent of the writer or publisher was not, either as matter of law or fact, the test whereby the crime was to be judged, was never avowed. I consider that the decisions which went to restrain the rights of jurors to judge whether the publication was a libel or not—whether it improperly reflected upon the conduct or character of the prosecutor which prevented the truth from being evidence, were innovations upon the common law, and that the intervention of legislative power was not to correct any error or supply any deficiency in that law, but to put an end to the innovations upon the rights of jurors which Lord Mansfield

particularly had attempted to make. The English statutes and our statutes were passed not for the purpose of giving more extended liberty to writers and publishers, but to restore these rights in those parts where they have been invaded, and for that reason their phraseology and provisions are confined to those rights. We must, therefore, not look to the statutes for the purpose of ascertaining what defence the publisher may make, or to show to what extent he may prove his motives, or that he published without malice, but we must look to the common law, and, although the statute says nothing as to the malicious intent of the party, the strong and only inference is, that in this particular the rights of the press had not been openly violated.

"If the motives of the party be matter to be passed upon by the jury as a constituent part of the offence, then I say proof of those motives is to be addressed to them, and not to the court, in mitigation of punishment. Nothing is to be submitted exclusively to the court by affidavit that goes to the gist of the crime. The facts which are to be presented to the court in mitigation are properly those which cannot be resorted to as a defence—facts which do not go to show that a verdict of guilty ought not to be rendered, but that, although the crime has been committed, it has been committed under such circumstances as to call for mercy, even at the hands of justice.

"If I am right in what I have said, then the defendant ought to have been allowed to give in evidence any facts, whether they constitute a part of the publication or not, which can by any possibility be associated with the motive for publication, however slight that connexion may be, and the jurors, either as passing on the law or the fact, are to judge of the motive, whether just or malicious, and the weight and bearing of the testimony. Were it otherwise, the court, by keeping back the testimony, would constitute themselves the sole judges of the purpose of the publication, and of the malice of the publisher. Under this view it appears to me that the testimony which was rejected by the court, and which is set forth in the third and fourth points of the case read, ought to have been admitted. As to the pamphlet itself, it seems to me not susceptible of a doubt, but that the defendant was entitled to have the whole or any part of it read.

"But let us examine the libel itself as set forth in the indictment, and the testimony given for the purpose of seeing whether the testimony offered ought not to have been received, in order to show the truth of the publication.

"The nature of that publication, I confess, as treated by the court, seems to me to have been misunderstood. It has been taken for granted as charging Mr. Hatfield with corrupt conduct, and on that interpretation of it most of the decisions of the court depend. I view it differently. It charges no corruption on Mr.

Hatfield; it only states facts, from which the reader would be led to infer corruption; but it would be the inference of the mind, not the allegation of Mr. Barker. He stated them as circumstances which caused him alarm and anxiety, and he did no more. As to him, then, the only inquiry should have been, Were the facts true? Were the alarm and anxiety real? And had they a rational foundation? If these matters were proved, he could certainly avail himself of the constitutional defence, that he published the truth, with good motives and for a justifiable end; and as the first thing to be proved was that he published the truth, he should have been permitted to give in evidence everything that tended to prove the truth of the facts he had stated in his publication.

"In addition to other facts, he has proved that after the general panel had been drawn, which consisted of two hundred, he informed Mr. Strong that there were three on that panel who ought not to sit on a jury to try him, that they were personally hostile to him, and that Mr. Davenport and Mr. Norwood were two of them, and he thinks Mr. Mead was the third. That Mr. Davenport was the first juror drawn from that panel, and Mr. Norwood the second, and Mr. Mead the fifth—that the mode in which the box containing the ballots of jurors was shaken by Mr. Hatfield attracted the observation of a bystander, who thought it was moved in a manner not to agitate the ballots; and at the time it so much excited the defendant's attention that he went to the clerk and asked for liberty to shake the ballot-box, which was refused. This testimony was given or offered to prove the truth of the libel, by showing that the facts averred in the publication were truly stated, that there was apprehension, (and, if the court please, good ground to apprehend,) as to the accidental drawing of the jury, and that the mind of the defendant was truly and justifiably filled with doubt and alarm. Indeed, there is but one assertion upon the face of this libel the truth of which is not entirely proved.

"I humbly contend that the court erred in their view of the publication when they charged the jury that they must either convict Mr. Hatfield, a witness in the case, or Mr. Barker. As the bringing home a paper by the accredited agent, who received it from a member of the legislature, was not criminal, and, therefore, if an innocent though mistaken allegation of that kind was made, it was not a libel; and also, that the court erred when they rejected all proof that did not go to establish corruption in Mr. Hatfield, and refused to admit proof of the facts stated in the publication as the foundation for the defendant's alarm, and which would unquestionably show that there was very justifiable cause for alarm.

"If we examine the facts admitted to have been proved by the defendant, as they must have presented themselves to his mind, it must

be obvious that it would have required more than common confidence in individual integrity, not to have apprehended that this was not all the result of accident, and more especially when we consider the situation of the defendant as one on trial. Here are twelve jurors to be drawn from a panel of two hundred, the chance that Mr. Davenport was to be drawn first was as one to two hundred. The chance that Mr. Davenport and Mr. Norwood would be drawn the two first, was as the square of two hundred, or as one to forty thousand. When we consider, in connexion with this, that Mr. Mead was also on the jury, that the chances that Mr. Davenport, Mr. Norwood, and Mr. Mead, the only three persons previously designated as objectionable and hostile by Mr. Barker, would not all be on the jury would be infinitely greater; and further, that the two first jurors might become *triers* of the qualifications of the other jurors, and admit them into the jury box, and that these two jurors were the personal enemies of the defendant; and I ask what ordinary mind could withstand the conclusion that all was not accidental in the drawing of the jury? With chances forty thousand—yes, forty millions—to one against the happening of an event that did happen, attended with the other circumstances which arose on that trial, who will tell me that the mind of any man whose interests were deeply involved in the result would have no misgivings—that the party on trial would be filled with doubt and alarm? It is impossible; a mind so situated could not resist such doubts—no confidence is strong enough to encounter these things and not hesitate. I, who in these latter days are more ready to set down extraordinary events to the roguery of man than to miraculous interposition, would have doubted. If the jurors had all the matters put before them, they must have believed that there was good ground for doubt, apprehension, and alarm."

This speech availed nothing, the recorder, being bent on his purpose, proceeded to fine Mr. Barker for the alleged offence \$250 in each case; they were taken to the supreme court, which decided that the penalty being inflicted, and the money paid, they could not interfere; that if they should reverse the judgment their decision would be a nullity, the money having passed beyond its control; that the court never allowed itself to do a thing which, when done, would be a nullity.

For the particulars of the further action of the recorder in the matter and the proceedings before the supreme court, the reader is referred to the petition of Mr. Barker to his Excellency Martin Van Buren, the governor of the State,

complaining of the conduct of the recorder which was as follows:

"MEMORIAL

"To the Governor, for the removal of Richard Riker, Recorder of the city of New York.

"Jacob Barker, of the city of New York, merchant, respectfully represents to His Excellency Martin Van Buren, Governor of the State of New York, that there was a very dangerous combination formed in the year 1826, by Richard Riker, recorder of the said city of New York, together with several aldermen of the said city, and many other persons, some of whom also held judicial and official stations in the said city, which combination was a breach of trust on the part of most or all of the parties concerned therein, and very disastrous in its consequences to the Tradesmen's Bank, and the Life and Fire Insurance Company, and, consequently, to the creditors of, and the persons interested in those institutions. That this combination was denominated a fraudulent conspiracy, and your memorialist was prosecuted as a party thereto, although he was not only innocent, but ignorant of the matters charged in the bill of complaint; and although he was absent from the State of New York, on a visit at Nantucket, when such combination or conspiracy was formed. That Hugh Maxwell, the district attorney, was induced to abandon the prosecution of nearly all the real parties, and to devote his utmost energies against your memorialist; and while these proceedings were going on, accepted of large fees from some of the real parties, under the pretence of serving them in some civil business. That at the same time the said recorder, and other members of the common council of the said city, who were implicated in the unfortunate stock transactions in the year 1826, induced the said common council to lavish the public treasure on the said district attorney by increasing his salary one thousand dollars per annum, expressly on the ground of his increased duties, which increase grew out of his extraordinary exertions in the proceedings complained of. That they also induced them to appropriate the funds of the said city to the payment of five hundred dollars to Seth P. Staples, esq., a lawyer from the state of Connecticut, recently established in the said city, and who had been previously employed to defend Matthew Reed, one of the said aldermen concerned in the said combination or conspiracy, and five hundred dollars to Ogden Hoffman, esq., and large sums to other counsel, to assist in such proceedings, and to the payment of other great expenses attending the same. That the said district attorney received his appointment from the court of which the recorder and all the aldermen of the said city are members, and is dependent upon their pleasure for his continuance in said office. That the said Rich-

ard Riker was examined as a witness on the trial for the said alleged conspiracy, at which time he was in possession of a contract for the purchase and sale of one half of the stock of the said Tradesmen's Bank, which contract he did not produce, and which, if he had produced it, would have developed the real parties to the alleged conspiracy, and have led to testimony that would have established your memorialist's freedom from offence. That, misled by the perjury of witnesses, by the suppression of facts, by the misapprehension of the law on the part of Judge Edwards, who presided on the said trials, by the misstatement of testimony made by the said judge, probably arising from his deafness, and by the said district attorney's combining together so many transactions and individuals for alleged offences separate and distinct from each other, insomuch that the said judge declared that the human mind was scarcely capable of comprehending the whole, the petit jury was induced to pronounce an opinion on the mystery unfavorable to your memorialist. That your memorialist knowing himself to be innocent, and that there had been dreadful frauds resorted to in creating such mystery, published an appeal to his fellow citizens, in which he drew inferences unfavorable to some of the officers of the court and jury. That he may have been, and no doubt was mistaken in ascribing improper motives to some of them, but his peculiar situation, his ignorance of the facts which have since been developed, and his knowledge that there was fraud somewhere, will, he hopes and trusts, furnish good reasons to believe that his publication was without malice.

"And your memorialist further represents, that for such publication the said district attorney procured two several bills of indictment for libel against your memorialist, the one for a libel upon Abraham B. Mead, one of the jury, and the other for a libel upon Richard Hatfield, clerk of the court of oyer and terminer, which he tried before the court of sessions, in which the said Richard Riker presided. That the indictment for a libel on the said Richard Hatfield was first tried. That the said Richard Riker there refused to allow your memorialist to prove that there was no malice in the said publication, noted the exceptions made by your memorialist, and promised to give him an opportunity of having the case reviewed before the supreme court. That relying upon that promise, and upon the certainty that his errors were palpable and conclusive, and altogether sufficient to render void the whole proceedings, your memorialist declined summing up. That the said Richard Riker charged the jury that malice was not necessary to sustain an indictment for a libel, and that the matters published being true was no justification. That by such means he induced the jury to pronounce the said publication a libel, although they, at the time, declared that they believed

that there was no malice in such publication. That application was made on the coming in of the verdict in the case of the said Richard Hatfield, to the said Richard Riker for a statement of the case to be taken to the supreme court, and he promised Dudley Selden, esq., the counsel of your memorialist, that the subject should be considered during the coming vacation; on which promise, as also on the previous promise of giving your memorialist an opportunity of having the case reviewed, your memorialist relied, and did not prepare to oppose a final decision at that term. That on the last day of the term, the said Richard Riker met the said Dudley Selden as he was going into court, and stated to him, that if your memorialist had anything to say on the subject of his case, it must be said before one o'clock on that day. That your memorialist procured the assistance of the late Thomas Addis Emmett, esq., who reminded the said Richard Riker of his promise to consider the case during the coming vacation, and pointed out the unprepared state of your memorialist for the argument, his cause for alarm, the absence of malice, and the errors of the said Richard Riker in rejecting testimony, and in laying down the law, and entreated a new trial, or, at any rate, delay until the opinion of the supreme court should be known, but all was unavailing. That the said Richard Riker proceeded immediately to pass sentence, imposing on your memorialist a heavy fine, and requiring him to give security in his own bond for two thousand dollars, and two sureties of one thousand dollars each, for his good conduct for two years. That this latter condition was, in the opinion of your memorialist, a violation of the constitution of the State, and that had your memorialist been guilty of the most malicious and unprovoked libel, it would in no wise have warranted such a decision, much less was the said Richard Riker warranted in trampling on the law, and violating the constitution, to oppress your memorialist, in a case where he knew the innocence of your memorialist, and his own guilt, in relation to the transactions which gave rise to the imputations against your memorialist, and from which your memorialist, by the said publication, was endeavoring to vindicate himself. That the said Richard Riker further stated from the bench when he thus imposed a fine upon your memorialist, and placed him under the heavy bonds above mentioned, that he might have been much more severe; that the law authorized him to send your memorialist to prison; that he had been tampered with out of court, which he afterwards said was to induce him to send your memorialist to prison; that thereupon your memorialist demanded that the said Richard Riker should state to the court, and to the public, the names of the persons who had thus dared to tamper with a court of justice, that they might be dealt with in a manner befitting their high offence; but the said Richard

Riker utterly refused to give publicity to their names, or exert the power of his court for their punishment. That in stating the case for the supreme court, the said Richard Riker omitted the testimony of George W. Strong, esq., and much other testimony; erroneously stated the testimony of Samuel H. Macy, and denied, or evaded the fact, that he charged the jury that malice was not necessary to constitute a libel, and inserted in his statement of the case, a deceptive clause in the following words:

"The defendant complains that, in both cases, injustice has been done to him; that the court and the jury have erred; that the jury have found verdicts against him contrary to the evidence, and that the court has misconceived the law; that the court, in the first case, not only excluded testimony, which ought to have been admitted, but rendered a judgment not warranted by law, and, in both cases, misdirected the jury. If this be so, if the court has mistaken the law, or the jury found contrary to the facts, Mr. Barker ought to have relief. It is always the duty of the court to give to the accused in a criminal case every legal advantage. The maxim that it is better for ten guilty men to escape than that one innocent man should suffer, has its foundation in the unchangeable principles of equity, as well as of humanity. If, therefore, the jury have found verdicts not justified by the proof, if the court has rejected any evidence which ought to have been admitted, if the court misdirected to the prejudice of the defendant, or has rendered a judgment not warranted by law, the mistake of the court, or the misfinding of the jury ought to be corrected. Every impartial tribunal, and every upright judge, can have no wish but to do justice, according to law. If an error be committed, especially if against the accused, let it be set right.

"To enable the defendant to avail himself of any error committed by the court or jury, the court will now proceed to state all the material facts and circumstances which arose in each case, and all the material principles of law which were ruled by the court. If anything essential to a just decision of either of the cases shall be omitted by the court, the defendant may supply it by affidavit, which will be certified by this court, so far forth as it may be correct."

"And your memorialist further represents that the said Richard Riker denied your memorialist and his counsel all participation in making up the said statement, and would not allow either of them to see it until he should have pronounced it in court, where he read it from the bench, and handed it immediately to a reporter for the newspapers for publication. That your memorialist protested against such a course, and entreated the said Richard Riker not to poison the public mind with a publication fraught with errors and falsehoods, until he should have an opportunity of having it

corrected, agreeable to the promise contained in that very statement. That all the efforts of your memorialist were unavailing, and the said reporter took away from court the said case thus read. That, it not appearing in the newspapers for some days, your memorialist inquired the cause, and learned that the engagements of the editor to whom it had been handed, with the business of a theological convention then in session, had prevented its publication for a few days. That your memorialist availed himself of this delay by attempting to procure a sight of the said statement for the purpose of correction, before it should be published, his then critical situation rendering it particularly desirable that no further excitement should be created in the public mind against him; but his efforts were, as before, unavailing, and the said editor assured him that he was instructed not to let any one see the said statement, and particularly not to let your memorialist see it. That after the publication took place your memorialist availed himself of the apparent fairness of the promise therein contained, and presented his own affidavit and sundry other affidavits to the said Richard Riker, pointing out his errors and omissions, particularly detailing the testimony of Samuel H. Macy and George W. Strong, that of Mr. Macy having, as aforesaid, been erroneously stated, and that of Mr. Strong, the most material witness in the cause, entirely omitted; whereupon the said Riker certified to the accuracy of the statement of your memorialist, as to the testimony of the said George W. Strong, recapitulating it, and as to that of the said Samuel H. Macy, he remarked in the words following:

"Mr. Macy swore, as stated by Mr. Barker, that, by this certificate, it will be seen, that the supreme court could not know to what the said Samuel H. Macy had testified, without the said affidavit. That, notwithstanding, the said Richard Riker, unknown to your memorialist, wrote a private letter to the judges of the said supreme court, objecting to their receiving the affidavits, and consequently requesting in substance that, if they should pass judgment at all, they should pass it on the false statement, which leads to the conclusion that the said Richard Riker intentionally denied your memorialist a fair trial; that he intentionally made a false statement of the case; that being conscious thereof, he inserted the deceptive clause, promising to correct his errors, if there were any, and that he never meant to give your memorialist an opportunity to have the case reviewed. The above mentioned letter was in the following words:

"COURT OF GENERAL SESSIONS.

Jacob Barker *ad. The People.*—*Libel on Richard Hutfeld.*

The Same *ad. The Same.*—*Libel on Abraham B. Mead.*

"In the above causes, the defendant requested the recorder to report to the supreme

court the substance of the evidence and the decision of the court upon the questions of law which arose upon the trials. Mr. Barker has lately submitted *his own deposition, and the deposition of some of the jurors* to the recorder, which are marked "*submitted.*" It is proper that the supreme court should be apprised that it is *not* intended by the court below, or by the recorder, to admit either the accuracy of those depositions, or the propriety of such depositions being received.

"Respectfully submitted, R. RIKER.

"To the Hon. THE JUDGES
OF THE SUPREME COURT,
New York, May 21, 1827."

"And your memorialist further represents, that the judges of the supreme court, aware of their duty not to permit any side bar influence, and too much the lovers of justice to allow any secret *ex parte* proceedings, read the above letter in open court, and declared that they considered it equivalent to a request that they should not consider the case, as they never gave advice at the instance of the parties, and only when requested by the court below. That on hearing the said very extraordinary letter read, your memorialist immediately waited on the said Richard Riker, and demanded a certificate that the court below did request the supreme court to consider the case, which he gave in the words following:

"COURT OF GENERAL SESSIONS.

Jacob Barker }	The same
ad. }	ad.
The People. }	The same.

"It was the desire of the court of sessions, and of the recorder, that the report and opinion of the presiding judge should be reviewed by the supreme court, but we did not think that the affidavits ought to be received.

"Respectfully submitted,
"R. RIKER, Recorder.

"To the Hon. THE JUDGES
OF THE SUPREME COURT,
May 25, 1827."

"And your memorialist further represents, that the supreme court continued to refuse to consider the case, not on account of anything said in the above letters, but 'because,' as the chief Justice remarked, 'the court below had proceeded to pass sentence before the case could be got before them, which was *unprecedented in judicial proceedings*, it being the universal practice (in consulting that court) to defer sentence until the opinion of the supreme court was known.' That Judge Woodworth added, 'and this, too, when the counsel for the party only suggested that there was good reason to suppose an error had been committed by the judge who tried the cause; and in a case where that judge had promised to give the party an opportunity to have the case reviewed by the supreme court, the obligation

to have suspended further proceedings was much greater; yet the court of sessions proceeded to fine Mr. Barker, and the money has been paid and passed beyond the control of this court; therefore, if it should interfere, and attempt to reverse the proceedings below, such reversal would be unavailing;' and that Judge Sutherland said, 'This court cannot consent to take any proceedings, which, when taken, would be a nullity.'

"And your memorialist further states, that on the aforesaid trials for libel, the said Richard Riker, by charging the jury that malice was not necessary to sustain an indictment for a libel, procured the conviction of your memorialist. That he, in substance, denied in the written statement that he had so charged, and as your memorialist is constrained to believe, for the purpose of depriving your memorialist of the benefit of urging the absence of malice, and for the same purpose he omitted the testimony of George W. Strong, as before stated; that this was the most material point in the case, and on which your memorialist was anxious to obtain the opinion of the higher courts, as well from a desire to preserve the liberty of the press, as to protect his own rights. And your memorialist, to show the pointed manner in which the said Richard Riker laid down the law in this respect, and the effect it had on the jury, begs leave to refer to the following affidavits.

"Court of General Sessions of the Peace in and for the city and county of New York.

Jacob Barker }
ads. }
The People. }

"Edmund Haviland, being duly affirmed, saith, that he was one of the late jury which convicted Jacob Barker of publishing a libel on Richard Hatfield; that after the recorder had delivered his charge to the jury, and when they were about retiring to deliberate on this case, this affirmant inquired of the recorder, 'Must we convict Jacob Barker although we should think there was no malice?' To which the recorder replied 'Most certainly.' This affirmant further states, but for this he should not have agreed to the verdict.

"EDMUND HAVILAND.

"Affirmed before me, this 17th day of May, 1827.

"W. SEAMAN, Commissioner."

"Court of General Sessions of the peace in and for the city and county of New York.

Jacob Barker }
ads. }
The people. }

"William Galloway, being duly sworn, testifieth and saith, that he was one of the jury which tried Jacob Barker for publishing an alleged libel on Richard Hatfield, and that the

recorder stated the law to the jury in such a manner as for it to appear that malice was not necessary to constitute a libel, and that after the jury retired, several of them stated to this deponent that they did not believe the defendant was influenced by any malicious intention, but that as the recorder had charged that that made no difference, they felt it to be their duty to agree to a verdict of guilty. This deponent further testifies, that he does not now believe, and never did believe, that Jacob Barker either wrote or published the book in question with any malicious intention.

“WILLIAM GALLOWAY.

“Sworn this 18th day of May, 1827, before me,

“JAMES OSWALD GRIM,

“*Commissioner to take the acknowledgment of deeds, &c.*”

“*Court of General Sessions of the peace in and for the city of New York.*

Jacob Barker }
ads.

The people }

“Samuel Candler, being duly sworn, testifieth and saith, that he was one of the jury which tried Jacob Barker for publishing an alleged libel on Richard Hatfield, and that the recorder stated the law to the jury in such a manner as for it to appear to this deponent that, in the opinion of the recorder, malice was not necessary to constitute a libel; and after the jury retired, several of them stated, in the presence of this deponent, that they did not believe the defendant was influenced by any malicious intention, and that they believed he had good cause for alarm; that this deponent was of that opinion, and he believes all the jury were of that opinion.

“SAMUEL CANDLER.

“Sworn this 18th day of May, 1827, before me,

“BENJ. DOUGLAS SILLIMAN,

“*Commissioner, &c.*”

“And your memorialist further represents, that in the opinion of your memorialist, the said Richard Riker was not actuated in his aforesaid conduct by any vindictive feelings towards your memorialist, but that he was under the influence of fear that his own conduct in relation to the aforesaid combination or conspiracy might be made a subject of inquiry, and that, to prevent such injury, he lent himself and his office to the hostile feelings of others.

“And your memorialist further shows, that the said Richard Riker was examined as a witness, before Thomas Bolton, esquire, a master in chancery, in the month of November last, in a suit in which your memorialist was a party, relating to the affairs of the aforesaid institutions, when his testimony was either wanting in candor and veracity, or his recol-

lection had so totally failed him as to incapacitate him for the performance of the duties of recorder of the said city: That he avowed himself the counsel of Matthew Reed, the late president of the said Tradesmen's Bank, who was one of the aldermen of the said city, and of course, with the said Richard Riker, a judge of the court of sessions in the said city, when the aforesaid combination or conspiracy was formed, and who was indicted for the same, and liable to be tried in the said court, of which the said Richard Riker was presiding judge; that the said Richard Riker urged before the said master in chancery, his being such counsel as a reason why he was not then bound to produce said paper, which paper would have led to the necessary testimony to establish the innocence of a person whom he knew to have been falsely accused.

“And your memorialist respectfully insists, that in addition to the judicial errors and frauds committed by the said Richard Riker, as hereinbefore described, his conduct, as guardian of the interests of the billholders, stockholders, and depositors of the Tradesmen's Bank, was wanting in fidelity, and calculated to sacrifice the interests of those from whom he had accepted the trust; that his motive for such conduct was individual gain, and that if he was faithless in his place as trustee, in that case, he certainly is not fit to be the guardian of the public chest, and much less of the public morals.

“And your memorialist respectfully requests that your excellency will recommend to the honorable the Senate the removal of the said Richard Riker from the office of recorder of the city of New York, for reasons growing out of his conduct hereinbefore stated. And if proof should be deemed necessary before such recommendation takes place, your memorialist respectfully asks leave to produce testimony, and pledges himself substantially to prove the facts hereinbefore stated, whenever an opportunity shall be afforded him to do so.

“Very respectfully, your excellency's obedient servant,

“JACOB BARKER.

“NEW YORK, *January 23, 1829.*”

The governor so far sustained the petition as to transmit a copy to the recorder, requiring an answer to the several charges. Before this answer was received, Mr. Van Buren accepted from General Jackson the appointment of Secretary of State, vacating the executive chair, leaving it to be filled by the lieutenant governor, who received from the recorder his vindication, and let him off mainly on his own averment that he meant no wrong by the proceedings of which Mr. Barker complained.

Application having been made to the su-

preme court to change the court where and before whom the next conspiracy trial was to take place, &c., Mr. Barker, among other things, said :

"Believing, as I do, that I cannot get a fair trial except I be tried by men capable of understanding the merits of the case and the law, and the public prosecutor having promised me a fair trial, I will now test his sincerity. It is a conceded fact, that the monied interest of the city have considered my operations for the last ten years as adverse to their interests, and have viewed me as competing with them for the same boon. Hence they feel a degree of opposition or hostility to me. Yet I am willing to be tried by them. If they are prejudiced, I am not afraid of it. There is too much integrity and intelligence among them for there to be any danger of my cause in their hands, and I now propose to be immediately tried at the bar of this court, and by a struck jury; that the panel jury be taken from the presidents of all the banks in this city, sixteen in number, the surplusage of four to be stricken off by the court after hearing argument. Let the public prosecutor agree to this, and I engage not to challenge a single man, and not to appeal if the verdict should be against me. If objections should be made on account of the smallness of such a general panel, let the cashiers of all the banks be added, which will make thirty-two; and if the general panel should still be considered too small, let the directors of all the banks be added, which will amount to two or three hundred, and will make the panel unusually large. The power of the court thus to form a jury, with the consent of both parties, cannot, I think, be disputed; but if am mistaken, there are many other ways in which they can direct a struck jury; but if I cannot have an immediate trial at the bar of this court, I will consent to the records being sent to a distant county for the trial of the others, and as soon as their trial is over I shall apply to this court to bring me back to New York for trial, as I can never consent to be tried elsewhere than in New York, unless it should become necessary for me to do so to procure justice for the other defendants. I have grown up with the city, to its inhabitants I am indebted for the little consideration I have obtained, and if they think me unworthy of what they have freely given, let them take it back, let them deprive me of it at pleasure, let them degrade and despise me, but I will not fly from them. I will not attempt to seek protection from their frowns at the hands of distant jurors. Be public opinion favorable or unfavorable, I am anxious to meet it. Here let me rise or fall. I cannot and will not quit my home—a home of which I am proud. I know my fellow citizens are just and generous, and although they may be deceived for a season, truth will ultimately prevail. There are many reasons

why this cause should not go back to the court of oyer and terminer: they are to be found in the manner in which that court is constituted, principally of laymen, totally destitute of law knowledge or pretensions thereto, and it is composed of the same, or nearly the same, members as constitute the court of sessions, where the two libel causes were tried; and these causes are a branch of the conspiracy cause, all one great conspiracy for the destruction of Jacob Barker. The strange positions assumed by the judge who tried the aforesaid causes are sufficiently within the knowledge of this court to remove all necessity for commenting on them here, and I trust will furnish sufficient reason for not placing my cause again into their hands. Nearly one-half of the members have sat on one or the other of the causes, and two of the members are by law *ex officio* directors of the United States Lombard Company, one of the institutions alleged to have been defrauded. William P. Rathbone was a member of that court, and you have the recorder's certificate that the district attorney had testified that Rathbone furnished the papers on which the public prosecutor endeavored to procure my conviction of a crime, of which crime Rathbone knew me to be innocent when he gave the papers. Another member of that court was also indicted, and many others were found, by the testimony given on the trials, to have been implicated in the transactions. The court of oyer and terminer severely reprimanded me, and fined me \$100 for having told a witness of a mistake he had made in his testimony, in which mistake I detected him while on the stand. At the same time they imposed this fine the presiding judge declared that the court were perfectly satisfied that I meant no disrespect to them, and the court of oyer and terminer have fined me twice, \$250 each time, for having published the most candid and sincere statement of my cause of complaint which I had the power of writing—a publication totally void of malice—and in one instance for the mere publication of a petition presented to the court by permission previously obtained, and which petition was received and entertained by the said court, and this court know the obstacles that have been thrown in the way of my getting those decisions reviewed here. Under such circumstances, can it be considered proper to send me back to be tried again by those men? And although none of the members, thus circumstanced, will sit on a new trial if it should be sent back to that court, yet their constant intercourse with the other members on political and official subjects gives them an imperceptible influence which might prove very prejudicial to me, without the members who should try the cause intending to do the least wrong, or being aware of such influence. I will now proceed to suggest the reasons for my asking a separate trial, and to be allowed to rise or fall by my own merits. They are, that

the case is so complicated that the human mind is scarcely capable of comprehending it in its present form, and so much more simple when separated, as manifested in the separate trial of General Swift, which occupied but little more than one day; that the grand jurors who found many of the indictments refused to couple me with the others; the efforts to get Mr. Oakley to join in the crusade against me, which he indignantly rejected; the conduct of Rathbone, in connexion with whom I am still liable to be tried, and that three of the counsel for some of the other defendants assailed me on the last trial. Their attacks were the most violent, unfounded, unprovoked, and unmerited ever made in a court of justice, and which the interest of their clients in nowise called for. So unwarrantable and improper was their conduct, that it appeared to have excited the sympathy of the public prosecutor, in so much that he rose to call one of them to order, strongly reprobating the course they were pursuing. He would not allow them to usurp his franchise. That all the persons presented in the same indictment with me were directors or officers of one or more of the institutions alleged to have been defrauded except myself, and that I occupied no such station in either of the companies. The improper attempts made on the court of sessions to influence their judgment against me, the names and circumstances having been withheld from the public by that court, the facts disclosed by Mr. Raymond's affidavit produced by the district attorney, from which it is fairly to be inferred that all the artificial excitement that has been produced has been levelled at me; that the others are nowise connected with me, nor I with them; and finally, that the court of oyer and terminer refused me a separate trial, but granted it to General Swift.

"I have throughout this business avoided doing or saying anything which could militate against the other defendants, and I hope that what I am here called upon to say will not have that effect; but I am constrained to dissent from the opinion entertained by them, that there is a widely extended prejudice.

"Great pains have been taken, by the conspirators for my destruction, to give everything that appearance; but it is all fraud, all trick, all device—the result of measures got up to destroy me. Men were sent to the hall to make an excitement, as they were sent to the judges of the court of sessions to influence their decision. The gentleman who has made the deposition that he thinks a fair trial cannot be had in New York is doubtless sincere in what he has stated, and has not been, to my knowledge, concerned in the conduct of which I complain; and there have been so many false lights exhibited, that it would be strange if he did not think there was a widely extended prejudice. The repeated decisions of the jurors are relied upon as evidence of this prejudice.

Their decisions amount to nothing. The manner of drawing and empannelling the jury, who convicted of conspiracy without examining the papers, is known to the court, and this court have before them the depositions of three of the jurors who convicted for libel; one of them on his oath says that he does not now and never did think Jacob Barker had any malicious intention in the publication, and that he had good reason for alarm; and that in substance he, the juror, did not know the law, and therefore looked up to the court for it; and the others also testify to my freedom from offence; and this honorable court will know, when they examine the case, how egregiously the recorder mistook the law when he charged the jury. The jury are not to blame; from the very nature of the case they could not know the law, and, like most other jurors, occupied in daily pursuits to obtain for themselves and families an honest livelihood by hard labor, they have no leisure to study the law; and the law makers, aware of this, place a court over them to whom it is the duty of all jurors to look up for law, light, and truth, whenever they are in doubt or darkness. I do not believe there was a particle of prejudice or unfriendly feeling towards Jacob Barker in the breast of a single juror who sat on either of the libel cases; and indeed one of them swore, as your honors will see by the affidavit in your possession, that it was a general conversation among the jury after they retired to consider the case, that Mr. Barker had not any malicious intention, and that he had good cause for alarm; and that juror further swore that he believed every one of the jury was of that opinion; and although I have produced depositions from but three, I believe they would all have given the same testimony if they had been applied to—three were deemed sufficient, and the first three applied to gave the evidence freely. This testimony admonishes all of the necessity of having an unprejudiced, impartial court that knows the law. I am now in the hands of such a court, and I trust they will not part with my case leaving any uncertainty about my having a fair trial. They have a full view of the frightful state of things which surround me, and I am sure this court never will expose to chance the right of a citizen to having a fair trial, and no trial can be considered fair except it be by men competent to understand the case. As to prejudice, the gentlemen have confounded terms; they construe the opinions of parties directly or indirectly interested into prejudice, and because the parties to this business are vastly numerous they think it is public prejudice. If the public, who were not interested, entertained these adverse opinions, I should think there was public prejudice. I know they do not, and that a different opinion prevails. The numerous companies that either failed or lost their funds, the numerous stockholders in those

companies, and the numerous creditors of those who were made insolvent by their losses by the failures of the companies, embraced many thousand persons, and they may all be considered interested in those prosecutions; hence the vast odds against the defendants. So many thousands on one side against a half dozen individuals on the other is a frightful difference; but it is not prejudice. So great was the prospect of gain in the purchase of bonds that almost every man, woman, and child in the city, who had an idle hundred dollars, was tempted to go in for a share. They could not resist the prospect of getting 60 or 100 per cent. for their money, and when the hopes of one and all were swept into the common vortex, mortified and disappointed in not realizing the golden harvest they had expected, they thought of nothing but their gold, their lost gold, and in place of ascribing their disappointment to their own imprudence and their own inordinate appetites for gain, for usurious interest, they were, without a particle of evidence, easily led astray, and joined in the cry of fraud against the innocent, got up by those who wish to hide their own guilt by diverting public attention therefrom. And when the trick is discovered we are told it is prejudice, public prejudice that has convicted the innocent. It is no such thing; it was the frauds, the falsehoods, the devices of the wicked.

I will not, at this late hour, trespass further on the time of the court, but I must be allowed to press on them the importance of my case. It is for reputation I am contending; it is not to avoid the penalties of the law. I care not for them further than my character is concerned. I was in hopes, before this argument had come on, that my counsel would have been heard in the libel cases. They would have told the court, that to get back the \$500 taken from me in those causes was the least of all possible inducements for the zeal manifested. It was to remove from the record the stain. When that argument shall be heard there will be such a development of facts as will make every heart shudder at the enormities committed on Jacob Barker; but as the court are in possession of documents sufficient to establish how just is his cause of complaint, I will only repeat the appalling fact, that the jury whose verdict was to consign him and his unoffending family to misery did not examine the papers proved in the case, and on which he relied for his entire exculpation. I can never believe that a verdict given under such circumstances will be considered of the least validity or evidence of guilt, yet it furnishes an additional reason why the case should be tried by men who understand financial matters, and this can only be attained by granting a struck jury, such a jury as will be capable of understanding the true merits of the case, in whom the public have implicit confidence, and whose

verdict, if favorable, will silence the tongue of the slanderer. I beseech the court, as they value the cause of truth and justice, not to send me for trial where the jury, from the very nature of the case and of their occupation, will have to look to the court for the law—to look for law where there is no law. What I ask is, that the court and jury who are to try me be capable of deciding whether I am guilty or innocent. I know myself to be innocent, and all I ask is an opportunity to demonstrate such innocence."

The supreme court did not sustain this application.

A third trial took place, in which Mr. Barker was defended by Chief Justice Spencer, Thomas Addis Emmett and George Griffin, esqs., from whose speeches of the two latter the following extracts are taken:

"Mr. SPENCER: Gentlemen of the jury, it may perhaps surprise you that I should appear in this cause—that I should now be addressing you in behalf of this defendant. Gentlemen, it is not from pecuniary motives; no reward in the power of Mr. Barker to bestow could have induced me to lend my aid to his cause. I became acquainted with his case from having been engaged in the argument on the case before alluded to, and I came here under a perfect conviction from that knowledge of Mr. Barker's innocence. I have known Mr. Barker for the last twenty years. I know that there have been reports and prejudices concerning him; the voice of calumny has been raised against his character. Yet, gentlemen, believe it not, it strikes at all, and I here proclaim, and were I trumpet-tongued I would cry it aloud to the world, that I believe him an honest, an honorable, and a highminded man. Gentlemen, we have much to complain of in this case.

"Mr. Barker is indicted of a conspiracy, with intent to defraud the Morris Canal and other companies, eight in the whole. To prove this conspiracy a number of transactions have been offered in evidence before you. The district attorney does not rely upon the overt act; but he has spread out these transactions, and now means to urge them as proofs of the conspiracy. We come here hoodwinked; we cannot tell what use the learned gentleman intends to make of these transactions. We are groping in the dark. Transactions, innocent in themselves, are to be coupled together for our destruction. It is of this we complain, this blind groping. The law on this subject is an anomaly. There is no other offence in the whole catalogue of crimes where a defendant cannot fully and clearly understand the defence he is to make. In this we are totally in the dark. The mind of man can scarcely conceive to what extent it may be carried. It was formerly customary in the country from which we derive our laws to indict men for high treason with-

out setting forth the overt acts; and many illustrious men have been brought to the block without knowing until the hour of trial the offence for which they were to suffer. This law, in the wisdom of English jurisprudence, was altered and amended so as to require the definite crime to be set forth. The law of conspiracy still exists as it did before. Yet so sensible were our legislators of the necessity of a change in this respect that the senate of our State, at their last session, passed a bill to that effect, requiring the overt act to be set forth in trials for conspiracy; and this bill is still pending before the other house. I mention this, gentlemen, that you may perceive the peculiar hardship of our case. I suspect, gentlemen, you will find the task imposed on you one of great difficulty; and if the question was now put to you to say what particular acts have been proved against Mr. Barker you will find it impossible to point them out. There has been an accumulation of evidence, a throwing in of testimony, for what purpose I do not know, though the district attorney says we shall know by and by. So that you may perceive we are still groping in the dark, even as to the use to be made of this testimony.

"Gentlemen, you may suppose me bold, but, believing it as I do, I dare utter it, that when you come to an examination of the testimony in this cause, you will not only not find a single particle of evidence of guilt, but so far from it you will not find cause for suspicion against my client. The gentlemen may put it down; I have said it, and I will vindicate it. I have carefully listened to the testimony that has been given, and bestowed upon the case all the thought of which I am capable; and if all my capacity to understand and to discriminate between right and wrong has not forsaken me, I am not mistaken when I say that the testimony which has been given makes my client's conduct praiseworthy throughout. This I say conscientiously, and I wish the world so to understand it."

"Mr. EMMETT: Gentlemen of the jury, I most sincerely concur in the opinion expressed by my learned friend, who has so emphatically told you that our client stood before you, after near three weeks' investigation, untouched by the testimony. Nothing can be more manifest than his freedom from offence. It is in proof that his every act throughout this whole business has been not only blameless, but praiseworthy. This I declare to be my sincere opinion, and I felt peculiar pleasure in hearing Judge Spencer put forth corresponding sentiments in a manner that convinced all of his sincerity—his course of reading and thinking, his judicial duties, his habit of viewing both sides of all subjects brought before him, have particularly qualified him to form a correct opinion of this very complicated case; therefore it is to me a source of much gratification to know that he thinks with me, that there is

not even a cause of suspicion against my client, and yet we find a most numerous array of counsel brought here to endeavor to procure his conviction. It naturally occurs, by whom are they employed? They have too much reputation, and their time is too valuable, for them to come here and waste a month in pursuit of fame only. They must be paid by somebody, and I demand to know who that somebody is? I ask who pays them? To this question I demand an answer. My client is entitled to the information. Every accused man is entitled to know who his prosecutor is. He has a right to show to the jury, as matter of defence, the motives, the malice, the character and conduct of those who instigate or carry on proceedings against him. He has a right to proceed against them for a malicious prosecution, and on that account to know who they are. It is not a sufficient answer to shelter them under the assertion that the people prosecute. The king prosecutes in England; but that does not deprive the subject of the right to know who maintains the prosecution. The district attorney says he employs them; but the question still recurs who pays them? The governor has not ordered their employment. The corporation have not done it. No order for that purpose appears on their minutes, and they have no right to interfere or divert the city funds for that purpose. The legislature have not done it. I ask then who has, and studiously keeps himself concealed? I say again to the public prosecutor, who pays and hides himself? Mr. Barker has always charged this prosecution to be a wicked conspiracy to destroy him; and if the public prosecutor will tell who pays and keeps concealed, it will give a clue to this foul conspiracy. Let us know who are secretly devoting their thousands to destroy an innocent man, and we shall have no difficulty in developing the whole plot.

"The peculiar qualities of my client's mind and disposition have rendered it utterly impossible for his counsel to keep him within those professional rules which would have governed them, had the case been left entirely to them; but you have witnessed that he would not be regulated by our advice; he has provoked the ire of our opponents, and they have promised to retaliate to the extent of their ability. 'Let them do it,' says my client. Although we do not approve of his course, we are persuaded that you see sufficient provocation for it. His outraged feelings at the enormity of these proceedings, at the tricks and devices that have been resorted to to procure his conviction; the constant attempts to misrepresent all his conduct, and to infer fraud from the most praiseworthy and disinterested of his acts are enough to fill a mind less acute, less sensitive than his with indignation. Boiling over, as he is, under a sense of the wrongs done him, he seems to have thrown off prudential restraint, and to have had more pleasure in rebuking the gen-

tlemen who are pursuing this course towards him, than in any other branch of his defence. I admire the spirit that has prompted this bold and manly course, while I regret its want of prudence. Yet there is, nevertheless, an advantage in it; such a course is utterly inconsistent with guilt. None but honorable, honest, and high-minded feelings could have enabled him to pursue it, and carry it through. Consider this well; give to it the influence to which it is entitled, and you will say that the whole nature of man has been changed in the formation of Mr. Barker, or that he is an innocent man. It has been thought to procure his conviction chiefly on the testimony of David Leavitt. He has stated that Mr. Barker told him, about four days after the failure of the Hudson Insurance Company, (which he fixed to be on the 8th of July,) and before the failure of the Life and Fire Insurance Company, that he had the control of the notes deposited in the Fulton Bank for collection by that company; and that Mr. Barker told him, on Saturday, the 15th of July, three days before the failure, that it was questionable whether the Life and Fire could sustain itself or not. Had all this been so, there was no harm in it. Barker had the right to have the control over the property of any individual or corporate company that thought proper to give it to him and owed him largely; and in this case, from the advances proved by the prosecution to have been made by him, there would have been a peculiar fitness in their having given him the control of those notes; and, as to his telling Leavitt that it was doubtful if the Life and Fire would be enabled to sustain itself, what harm was there in that? The bank was itself, at that very time, hard pressed; Barker deeply interested, and actively engaged in sustaining it; the Hudson Company's failure that day, overdrawn more than one hundred thousand dollars without security, to the Fulton Bank; a great excitement about the Tradesmen's Bank; all confidence lost in the bond companies; the Life and Fire having a great issue; its dealers failing daily, was there not cause enough to induce a prudent man to give a word of caution to the presiding officer of a bank in which he himself was deeply interested, and in which that company kept their account?

"With this view of the subject, I should not have attempted to contradict the witness, however incorrect the testimony he gave; but my client knowing it to be untrue, and persuaded that it was contrived to injure him, decided instantly to detect the misstatements, and he succeeded to his heart's content.

"The point of the evidence was, to make out that Mr. Barker had the control of the effects of the Life and Fire before the failure of the company, when the power of attorney was given; to make out Barker's knowledge that the company was bad, and also to breed a further quarrel between Barker and the Life

and Fire gentlemen, by making them believe that Barker had not acted in good faith with them. Had the district attorney given credit to this improbable tale of his own witness, would he not have asked the clerks of the Life and Fire if Mr. Barker had any such control? If he ever attempted to exercise any? If he ever spoke of those notes? Ever looked at their bank-book, or asked for authority to draw them? Had he asked these questions he would have been told 'no, never!' The public prosecutor knew better than to ask any such question. And would Mr. Leavitt, who boasts of his vigilance at this time in watching over the concerns of the bank—would he, I ask, have permitted the daily payment, to a great amount, without funds, of the checks of a company in full business, who had given to any individual not connected with such company the control over their bills receivable? The story is too ridiculous, too absurd, to gain credit for a moment; but my client does not depend upon inferences to silence these calumnies; and I will give you a short statement of the testimony in relation to Mr. Leavitt.

"Mr. David B. Ogden told you that Mr. Leavitt intentionally deceived Mr. Eckford, and those concerned in the settlement for the Morris stock, on the day of settlement, in this, that he said the certificates were at the bank, when he knew them to be in the hands of the grand jury; and if he has sacrificed the truth on one occasion, he must expect his testimony to be more scrupulously canvassed on another.

"He testified that he had several conversations with Barker after the failure of the Hudson Company, and before the failure of the Life and Fire. That in one of those conversations Barker told him that he had the control over the notes in the Fulton Bank deposited by the Life and Fire, and that, as near as he could recollect, this conversation took place about four days after the failure of the Hudson Company, and a week before the failure of the Life and Fire. That the Hudson failed the 8th of July. That in speaking of the overdrawing of the Life and Fire, Barker mentioned the note of Allaire as one on which calculation could be made towards the payment of such overdrawings. That subsequently the Life and Fire withdrew the note of Allaire; that such withdrawal took place after the notice from Barker that he had the control of that note; when Barker heard of it he complained, alleging that the bank had no right to give it to any other person than himself.

"Kingsland testified that the note was withdrawn by himself, pursuant to the orders of the officers of the company, after the failure of the Life and Fire, and before the account was made good. Leavitt stepped up and disputed Kingsland's testimony, and testified that if it was withdrawn before the account was made good, that it was withdrawn before the failure of the company, and before the overdrawings; that

he had never given up security while the account remained over. Kingsland was recalled, and examined the books, and testified that the note became payable on the 24th of July; that it was withdrawn after the failure and before it was protested; he could not say on what day, but it was on or about the 24th of July, he believed, on the very day it became due; it was not protested; it would have been, had it not have been paid or withdrawn. Clinch testified that it would have been protested if it remained in the bank until due; if paid, it would have been entered to the credit of the Life and Fire; neither had happened; but from the erasure on the note-book it had been withdrawn either on the day it fell due or before.

"Kingsland, being further examined, testified that when he went to the bank to withdraw the note the clerk refused to give it to him, alleging that the Life and Fire account was withdrawn, and that the note could not be given up until the account was made good. Leavitt was present; the clerk spoke to him, and after some time spent in conference and examination it was determined that, as there were other satisfactory notes in the bank sufficient to secure the amount overdrawn, Allaire's note might be given up, whereupon the clerk gave to Kingsland the note.

"Leavitt swore that Clinch came up to the board of directors on Monday, the 17th July, and said Barker had forbid the payment of Life and Fire checks; that he came down and stated to Barker that they must pay to the extent of funds in hand, to which Barker made no reply. Clinch stated that Barker did not attempt to forbid the payment of any check, or did he intimate that Life and Fire checks ought not to be paid to the extent of funds in hand; that Barker called on Monday, the 17th of July, at the close of the business of the day, and intimated to him that it would be prudent not to pay Life and Fire checks beyond funds in hand; that he went immediately up stairs to the directors' room, where they were assembled, and mentioned it to the president, who came down, and, Clinch believes, invited Barker into the directors' room; that he did not tell Leavitt that Barker had forbid the payment of Life and Fire checks, nor did he intimate to Leavitt that Barker had said they ought not to be paid to the amount of funds in hand, but that he told Leavitt that Barker had intimated that it would be prudent not to pay them beyond funds in hand. Leavitt testified that Barker told him on Saturday, the 15th of July, that he considered it uncertain whether or not the Life and Fire would be enabled to sustain itself; that he did not, on receipt of this information, give any caution to the clerks of the bank not to pay Life and Fire checks beyond funds in hand, because the clerks had previously received peremptory general orders not to pay beyond funds in hand. Clinch testified that they were in the daily habit of paying Life and Fire checks for large amounts

in the course of the day without money in hand, relying on its being made good before three o'clock; that this practice continued down to the day of the failure; that Leavitt knew all about it; that no order had, to his knowledge, been given to refuse or to examine Life and Fire checks; that large amounts would have been paid on the day of failure, had they been presented, whether there had been money in the bank to the credit of the Life and Fire or not.

"Kingsland testified that the Fulton Bank were in the daily habit of paying checks for large amounts, as they were presented, without money in hand, and that he made the account good daily by depositing about a quarter before three o'clock. The amount overdrawn was about \$1,400 or \$1,500, and happened the day the company failed, which was made good, partly on the 21st July and the residue on the 11th of August, by the collection of notes; that the residue of the notes had been delivered to the receivers, and that none of them had been delivered to Barker.

"Mr. Franklin testified that he resigned his seat as a director of the Fulton Bank about the 13th of July, and that the Hudson Company did not fail until a day or two after such resignation. Leavitt then came forward again to correct his testimony, and said he had been mistaken as to the time the Hudson Company failed; that they had paid all their bonds on the 14th of July. Leavitt came forward again to explain, stating that he had several conversations with Barker about the state of the Life and Fire; that he had not refreshed his mind by examining the notes of the former trial, but that he thought the conversation about his having the control of the notes was before the failure of the Life and Fire; he also restated that all his conversations with Barker in relation to the Life and Fire notes were subsequent to the failure of the Hudson Company. Mr. Butler and Mr. Sparhawk stated that Mr. Leavitt had testified on the former trial of this cause, that when Barker told him that he had the control of the Life and Fire notes deposited in the Fulton Bank, they were conversing about the overdrawings of the Life and Fire, which overdrawings took place on the day of the failure of the Life and Fire; that Leavitt stated it was after the failure that this conversation took place, but how long after Mr. Butler said he did not recollect; that he had put down on his notes at the time, that Leavitt stated that such conversation was after the failure of the Life and Fire, without mentioning how long after. Mr. Sparhawk stated that Leavitt had on a former trial stated that the first conversation about the overdrawing was on Monday, after the failure of the Life and Fire. The Life and Fire failed on Tuesday, the 18th of July. The Monday after was the 24th, the very day when Mr. Allaire's note became payable, and of course the very day of all others when the parties would be most likely to talk of it, and that

after this it was that Barker told him that he had control of the notes of the Life and Fire deposited in the Fulton Bank. Leavitt further testified on the present trial, but at an early stage of his examination, that he considered Barker had been instrumental in getting him removed from the presidency of the Fulton Bank; superadding, 'but I have no prejudice against him.' And when pressed to say whether or not Barker had been employed by the directors of the Fulton Bank, to assist them in sustaining the bank at the time it was run, (the 17th of July,) he insisted that Barker was a volunteer, and seemed unwillingly to admit that Barker's assistance was either acceptable or beneficial; the guaranty of Leavitt and others expressly recognised Barker as assisting by their request. Mr. Lawrence and Mr. Carter testified to that fact; and Mr. Hicks testified that he heard Leavitt, during the run on the Fulton Bank, request Barker to send the specie immediately, and to get a carriage for that purpose.

"Mr. Leavitt said, in answer to a question put by Mr. Barker: 'Do you not believe that if Messrs. Spencer and Brown, and those directors of the Fulton Bank under their influence, had not resigned, and Mr. Barker had not rendered aid, that the bank would have been compelled to stop payment?' 'I think not.' 'Do you mean to say that the bank could have met all its engagements punctually, after the Hudson Company had failed, if the president and directors of that company had continued their controlling influence over the direction of the Fulton Bank?' 'I think so.' 'Do you recollect the great excitement in the city, and particularly against those men; the total prostration of credit; that the specie in the bank was reduced to \$3,000; and, in the language of Mr. Clinch, that the bank was surrounded by a mob to get their bills redeemed?' 'Notwithstanding all this, I think the bank would have met its engagements, because an arrangement had been made by which the necessary aid was to have been procured from the Tradesmen's Bank.' 'That is news to me. Let us have the particulars.' Mr. Leavitt did not make any explanation. Here let it be remembered, as an established fact, on the testimony of Falls and Nevins, that the Tradesmen's Bank was placed under an injunction on the 15th of July, and that the run on the Fulton was on the 17th July, and that, therefore, it could not have got a dollar from the Tradesmen's Bank.

"The Rathbone paper is dated 12th July. Messrs. Burrell and Humphreys were elected on that day, as appears by the minutes of the bank in proof. Mr. Cailin testified that they were elected very soon after the conference between himself, Mr. Leavitt, and Mr. Barker, about new directors; that he believed the very next morning; could not say the precise time, but that he perfectly recollected they were

elected very soon after such conference. Mr. Carter testified that Messrs. Hazard, Corse, Lawrence, Thurston, and Comstock, were elected expressly on the ground of their being Barker's friends, and that those five gentlemen were very fit men for the situation, and that the affairs of the bank were safe in their hands. The minutes of the bank prove that they were all elected on the 13th and 14th July, and by Leavitt and his friends, as neither Brown, Spencer, Rathbone, Franklin, or their friends, were at the board when the election of either of them took place; although only one at a time had resigned, and not another until the previous vacancy had been filled. Mr. Carter stated, also, that the bank had advanced \$9,000, and that he understood that Barker, or Eckford and Barker, had advanced an equal sum for the support of the Hudson Company. This plainly proves that these things were all done in pursuance of some arrangement with Spencer and Brown, growing out of the negotiation to which this paper, No. 3 and 4, was a part; but it does not prove the precise terms of the agreement, when the negotiation reached the form of an agreement.

"Here we have the testimony of David B. Ogden, esq., as to the inaccuracy of Mr. Leavitt's declarations on settling for the Morris stock. We confront Mr. Leavitt's declaration on this occasion, that Barker told him he had the control of the Life and Fire notes a week before their failure, with his oath on the former trial, where he said it was after the failure of the Life and Fire that Mr. Barker told him this; for which we have the testimony of Mr. Sparhawk and Mr. Butler, sustained by their separate notes taken at the time. And since we are obliged to credit the oath he now makes, or the oath he then made, we prefer trusting his recollections for four rather than for twelve months; as he would be much more likely to relate accurately while the circumstances were fresh in his recollection than after a lapse of a year, especially as in the interim he said he had been removed from the presidency of that bank by the instrumentality of my client.

"He stands contradicted by several witnesses, as to the period of the failure of the Hudson Insurance Company. Kingsland contradicts him positively, as to the withdrawal of Al-laire's note. Clinch contradicts him positively, as to Mr. Barker's forbidding him to pay Life and Fire checks. And will any one believe, if Barker had given him the alleged information on Saturday, that he would not, under the circumstances, have given an intimation to the clerks of the bank? Clinch swears, that if the checks of the Life and Fire Company had been presented on the day of the failure, to the amount of 20 or 30,000 dollars, they would have been paid without funds, and without examination.

"Leavitt swore that he had no pique against Mr. Barker, and this, too, without being asked.

He may not be conscious of it; but can you believe that assertion, gentlemen of the jury, after the testimony you have heard? Why then, did he, when asked if Mr. Barker had not been invited to assist the bank in its troubles, elude the admission, and declare Mr. Barker to have been a volunteer?

"On this subject, how differently did Mr. Lawrence, Mr. Catlin, Mr. Selden, and Mr. Carter testify? And Mr. Hicks stated, that he heard Leavitt apply to Barker to assist the bank, to send the specie immediately, and to get a carriage for the purpose.

"Mr. Clinch testified, than Barker brought the specie in the time of their greatest need. And, gentlemen of the jury, you heard Leavitt swear that the Rathbone paper, dated the 12th of July, did not relate to the negotiation for change of directors, which took place in the Fulton Bank. The express words of that paper are: 'to fill the two existing vacancies.' The minute book and Mr. Carter proved to you there never was two vacancies on any other day. They were filled by Messrs. Burrell and Humphreys that very day.

"And Mr. Catlin further tells you, that Mr. Leavitt and Mr. Barker called at his house to consult him, and to procure his assistance in selecting two good directors for the bank, the preceding evening. Now, after having heard all this testimony, I should like to see the man, if there be one, hardy enough to ask a jury to place any reliance on the testimony of the witness in question. Be the misstatements he has fallen into the result of a defective memory or not, they are so great and glaring, that a discreet jury would never permit themselves to act on its evidence."

This trial resulting unfavorably, Mr. Barker having taken many exceptions to the proceedings on the trial, on which he intended to apply to the supreme court to set aside the verdict, it became important that the supreme court should be furnished with a full statement of the case. This was also necessary to enable the court to regulate the degree of punishment, in case they should confirm the verdict. Mr. Barker, therefore, prepared a statement of the whole case, and presented it to the district attorney, who refused to look at it or make any counter statement, whereupon Mr. Barker, accompanied by his counsel, George Griffin, esq., applied to Judge Edwards, and requested him to furnish a copy of his notes in the case, with a copy of his charge to the jury, which the judge utterly refused to furnish, adding that his notes were not full, nor could he rely upon their accuracy; and that he would not make any report of the trial to the supreme court, unless

that court should require him to do so; but that, if Mr. Barker should make a case, serve it on the district attorney, and furnish a list of exceptions, and the parties afterwards appear before him, with such case and exceptions, he would settle the same. Mr. Griffin then informed the judge that Mr. Maxwell refused either to look at that prepared by the defendant or to prepare one himself, notwithstanding which, the judge adhered to his refusal with great pertinacity. Mr. Barker then gave the district attorney notice to appear before the Hon. John Savage, chief justice, at his chambers, in Albany, to show cause why a case should not be made for the use of the supreme court. On reaching Albany, Mr. Barker found Judge Edwards and Mr. Maxwell there; he informed Chief Justice Spencer, his counsel, of Judge Edwards' refusal. "Very strange, this," replied the judge, "let us go and see him, he will not refuse me." Mr. Barker responded, that such an application would be useless, that he would certainly adhere to his refusal. "Impossible," said the chief justice, "let us go and see." They did so, and repeated the application for a report of the case from the judge, or for a copy of his notes and charge to the jury, which he again refused to furnish. The motion before Chief Justice Savage coming on, Mr. Maxwell appeared and made one of his boisterous and inflammatory speeches, to which Mr. Barker was about replying, when the chief justice observed to him, that a reply was unnecessary, that all he had to do was to verify his own statement, and the court would, under the circumstances, consider it the case to be passed upon.

For the purpose of establishing, before the supreme court, that Maxwell did not present the complaint of Mr. Barker, with his proofs, to the next grand jury, the following testimony was procured:

"SUPREME COURT.

Jacob Barker and others, }
ads. }
The people. }

"Stephen Allen being duly sworn, deposed and saith, that the within certificate is in the handwriting of this deponent, and that the facts therein set forth, as of his own knowledge, are true. And this deponent further says, that he was one of the grand jury for the court of sessions for the month of July, 1827, and that he

acted as foreman thereof; that Mr. Jacob Barker applied to this deponent to know if sundry papers had been placed in the hands of the grand jury, which the said Barker alleged he had placed in the hands of the previous grand jury, and which they had handed over to the court of sessions, as unfinished business, for the purpose of having the inquiry continued by the then sitting grand jury. This deponent replied to the said Jacob Barker, that no such papers had come before that grand jury; that he had not heard or seen anything of them; and this deponent further saith, that the said papers were not submitted to the said grand jury; that the said Barker said he very much wished the use of some of the said papers on the trial then going on against the said Barker for an alleged conspiracy; that he considered them as containing very important testimony in his favor.

"STEPHEN ALLEN.

"Sworn, the 31st day of July, 1827, before me.

"NATH. B. BLUNT,
"Commissioner, &c."

Mr. Barker, therefore, presented to the supreme court the case prepared by himself, and his counsel was about to argue thereon, among other things, that the verdict was against evidence, when the district attorney requested to have such argument deferred until the judge's report of the case should come in, which, he stated to the court, was in progress of copying. At that time Judge Edwards was in Utica, where the supreme court was sitting, on his way to Penfield. Mr. Barker made application to him to know if he was preparing a report of the case. On being informed that he was not, and should not, unless required to do so by the supreme court, being again requested to examine the case prepared by Mr. Barker, he declined. Mr. Barker then requested him to examine his statement of the judge's charge, and to certify the same if correctly stated; if not correctly stated, to point out the errors for the use of the supreme court, which he utterly refused to do, and repeated that he would not do anything about the case, neither for the one party or the other; that he had determined not to look at any statement made by either, and, unless the court should require of him a report, he would not make any.

Mr. Barker then informed him of Maxwell's motion and statement to the supreme court, and requested him to defer his departure for the west until the court should meet the next

day, that he, Mr. Barker, might have time to apply for such order, which he declined to do, and departed from Utica without making any report. After his departure the district attorney sent a messenger to him with a statement of the trial, prepared under the direction of the district attorney, by his clerk or partner, without reference to, or aid of the notes from the judge.

Mr. Barker was assisted by Ambrose Spencer, esq., who insisted that there was sufficient error in the record to quash the whole proceedings; and, therefore, it was unnecessary to await the return of the public prosecutor's messenger.

The writ of error was taken up and discussed at great length by the counsel on both sides, in which Judge Spencer distinguished himself, as usual, making a very logical, learned and impressive speech.

The court sustained the writ of error. In pronouncing their decision, they said, among other things, that in the district attorney's answer to Mr. Barker's application on the trial to produce the papers delivered by Mr. Barker to the grand jury, and removed by him from the files of the court, he said "he had them not," when he had them. This appears in the decisions of the supreme court of New York, for 1827. After this decision, Maxwell left Utica; his messenger had not then returned. When he came back he brought the case which had been prepared by Maxwell, certified as follows:

"Upon comparing the foregoing case with my notes, I believe it to be substantially a correct report of the testimony of the witnesses as given on the trial. The books and other documents, including the affidavits as to the testimony of General Swift, will, I understand, be exhibited by the district attorney to the court.

"OGDEN EDWARDS.

"PENFIELD, August 13, 1827."

That the judge should have so soon relinquished his determination, so often expressed, not to take sides in relation to the report, not to look at the statement of either party, and not to report the case to the supreme court until ordered by them to do so, is not less surprising than that he should continue to withhold a copy of his minutes and of his charge, and certify as correct the statement of the district attorney, without giving Mr. Barker an

opportunity of pointing out the manifold errors and discrepancies which run through the whole document; which document, the judge states in his certificate, he had compared with his own notes, without saying that his notes were short and imperfect; a fact within his own knowledge, and which had induced him to declare to Mr. Griffin and Mr. Barker, that he could not rely upon them; and yet he refers to his own notes in his certificate in such terms as would, in the opinion of Mr. Barker, lead the supreme court to suppose they were full and accurate, and entitled to implicit confidence.

Mr. Barker wishing the public to understand the district attorney's version of all that had occurred, borrowed the document from the messenger, and with the assistance of three or four friends, took a copy of it before the rising of the sun on the following day, which copy, although imperfect and full of errors, he caused to be immediately published in pamphlet form.

The public mind was constantly poisoned by the erroneous statements of Maxwell, his inflammatory speeches and newspaper misrepresentations; in refuting which James Gordon Bennet, esq., then editor of the National Advocate, was particularly useful, and did more to disabuse the public mind than all the other newspapers of the nation; to him Mr. Barker feels under lasting obligations.

The whole subject was finally disposed of by the following proceedings:

"SUPREME COURT.

"Henry Eckford, Joseph G. Swift, William P. Rathbone, Thomas Vermilyea, George W. Brown, Mark Spencer, Matthew L. Davis and Jacob Barker,

ads.

The People.

"NEW YORK, October 23, 1827.

"SIR: You will please to take notice, that I intend to move on Thursday of next week, the first of November, the honorable the supreme court at the capitol at Albany, or as soon thereafter as counsel can be heard, that the indictment in this case be quashed, or that a *nolle prosequi* be entered, for reason that the said indictment is not supported by the authority of law.

"Your obedient servant,

"JACOB BARKER.

"HUGH MAXWELL, esq., *District Attorney.*"

"In Supreme Court, 14th November, 1827.

"Jacob Barker and others,
ads.

"The People.

"On motion, Ordered that the indictment in this cause be quashed.

"JOHN KEYES PAIGE, *Clerk.*"

The conspiracy trials being over, and the chancery suit continued, Mr. Barker caused many members of the grand jury, the district attorney, clerk of the court, many of the directors and officers of the institutions alleged to have been defrauded, to be examined, under oath, as witnesses before the master in chancery, to whom the case had been referred, from some of whom he obtained the original records of the parties to the fraud on the Tradesmen's Bank, fixing the date when it happened, at which time he was not in the State of New York; that he had been wrongfully deprived of his papers by Hugh Maxwell, who promised the grand jury that they should be forthcoming on the trial; that he took from the clerk of the court Mr. Barker's proofs as soon as the grand jury filed them, and selected therefrom the letters, six in number, from Mr. Eckford to Mr. Barker, which went to contradict the declaration that Maxwell graciously made, viz: "that Mr. Eckford had been made the victim of others." When he promised to restore him to the good opinion of his acquaintances, the letters he took off, leaving the other papers. When he was called upon to produce them on the trial he said he had them not. Mr. Hatfield proved he had them in court, and that he knew he had them there. The trial went on, and he did not produce them; that when he was constrained by the court of chancery long after the trial to account for them, he filed with the clerk of the court from which he took them seven letters; that the seventh was not addressed to, or intended for, Mr. Barker, he had never seen it, thus furnishing the strongest presumptive evidence that an unworthy intrigue had been going on between the public prosecutor and an indicted and unacquitted individual. This testimony also established Mr. B.'s entire freedom from all the offences charged; whereupon he called a public meeting at the Merchant's Exchange, in Wall street, and exhibited the record of the midnight conspirators against the Tradesmen's Bank. The said record was in the handwriting of the recorder,

who had wrongfully made Mr. B. pay five hundred dollars for publishing alleged libels in relation to the conspiracy trials, and put him under bonds *not to do so again*. He urged on the grand jury the importance of these papers, stating he relied upon them as a shield in the approaching trial; that the object of the district attorney in demanding to have them delivered to him was to shield those against whom the complaint under consideration was made for conspiring to make Mr. B. answerable for their own sins, and if he did get possession they would not be forthcoming on the trial. The grand jurors testified to Mr. Barker's extreme reluctance at leaving them. Depriving an accused party of the evidence on which he relied for his defence, which was documentary, in his own possession, and his own property, was as great an outrage as was ever committed by the public prosecutor of any country.

Mr. Barker's anxiety that the public should be kept informed of all the facts of the case, applied to many of the city papers for the publication of the necessary proofs. The influence of the moneyed aristocracy over the press was great, as will be seen by the letter of Messrs. Dwight & Townsend, herein published, and the following:

"My carriage is at the door, and I am this moment stepping into it; but I cannot do so without first suggesting to you the necessity of furnishing me with law authorities to my hand, for you know I am incapable of stirring a step out of my office.

"Where is Mr. Selden?

"Give me tools in my hands, and I will use them, but I cannot seek them.

"WM. COLEMAN."

"APRIL 19, 2 o'clock, 1828.

"DEAR SIR: I find it utterly impossible to become your public advocate without a greater sacrifice than you would wish me to make, but ask no questions.

"Noah and Graham have a fine opportunity to show themselves to very desirable advantage.

"Hastily,

"WM. COLEMAN."

"NEW YORK, March 15, 1843.

"MY DEAR SIR: I received a few days since, and have read with much pleasure, a recent speech of yours before a parish court in New Orleans. As a forensic effort, it is truly original; for the occasion and *object*, truly admirable.

"It embraces history, past and present, biography, personal and political, together with sketches and views of acts and things, of morals and principle, all just and true, and, what is no small addition, eloquently expressed.

"This speech, my friend, does you great credit.

"It is a full and vigorous vindication of your motives and character, and will, I hope, produce a just and salutary effect.

"Prejudice is not only the offspring of *ignorance*, but the mother of *calumny*, and is to be corrected and silenced only by the *lash*.

"You have taught the rogues a lesson which they will not soon forget.

"Your account of yourself was necessary, it was indispensable to your justification, and the open, frank, and manly manner of it does you great credit.

"I shall never forget the persecutions you endured and triumphed over in this city.

"It was, in my judgment, bitter and malignant in the extreme.

"I expressed my sense of it, at the time, in a *poetical satire*; which, after all, I dared not publish.

"It was a brief review of your history and character, with a glance at the motives and character of your assailants.

"I am almost tempted to give you some of the concluding lines of it.

"After speaking of you with much freedom, and, perhaps, some severity, it concludes as follows:

"*We know him well, and his most graceless deed
Is blazed so broad that he who runs may read;
Yet do we hold him far above that crew,
Who erst, like blood-hounds, did his track pursue;
Who basely joined the insensate rabble's cry,
And tried their utmost powers to crucify.
He has, with all his faults, redeeming traits—
That pride, which still on independence waits;
Strong sense, which no vain folly can efface;
Domestic virtues, and affections, grace;
Strength, that against oppression takes its stand;
A manly spirit, and a liberal hand;
A zeal that scorns e'en danger to elude;
Unflinching faith and matchless fortitude.
While then, by spite or meaner passions sway'd,
Have malice, spleen, and impotence betrayed;
A graceless corps, whom scarce a virtue warms,
No pride ennobles, and no vice alarms;
Alike devoid of spirit and of shame,
Who cringe to power and tremble at a name;
Who, destitute of merit as of wit,
Still strive to bite, yet grumble when they're bit;
Still prate of morals with malicious grin,
Yet canting, hide the lurking fiend within;
Who boast of honor, yet to honor dead,
O'er truth and charity unblushing tread;
Who envy practices beyond their skill,
And rail at vices which they practice still;
Who, parrot-like, repeat each senseless tone,
And damn from spite or prejudice alone.
The muse, though weak her voice, unfamed her song,
Indignant speaks her fix'd contempt of wrong.
She still resists where'er injustice rules,
And scorns the arts of knaves, the power of fools;
The senseless prejudice, the furious zeal
Of those who neither know, nor think, nor feel,
But as the vane of pop'lar passion plays,
Or as the sordid power of interest sways.
She scorns the oath combined with secret grudge,
The base caballer, and the bias'd judge;
The selfish views that with ambitious aim
Build on the ruins of another's fame.*

She scorns the pliant tool that's basely led
To hurl his vengeance at a guiltless head;
Who, won by wealth, or bribed by vile applause,
Colleagues with malice, and perverts the laws;
She scorns the caittiff who would damn in spite
Of his own sense of justice and of right;
Who to the favored few corruptly leans,
And kindred crimes with kindred baseness screens."

"No man, except the person who wrote them, can understand the above lines as well as yourself.

"Very sincerely yours,

* * * * *

"JACOB BARKER, esq.,
"New Orleans."

In consequence of the avenues to the public mind, through the daily press, being thus obstructed, Mr. Barker continued to address them in pamphlet form, from which the following extracts are taken.

Testimony taken before Thomas Bolton, master in chancery, in the suit in chancery of Henry Barclay, and others, vs. Henry Eckford, Jacob Barker, and others:

"Clarkson Crolius, sworn on the part of Mr. Barker, and being asked: Was you a member of the grand jury for the city and county of New York, for the month of June, one thousand eight hundred and twenty-seven?

"He answers: He was a member of the grand jury in the summer of that year, and he thinks it was for the month of June.

"Being asked: Did you see sundry letters from Henry Eckford, documents and papers appertaining, directly or indirectly, to the account and transactions between Jacob Barker and the Life and Fire Insurance Company?

"He answers: I did; I saw said letters and heard them read; other papers also. All said papers, witness thinks, had a bearing, directly or indirectly, on the subject enquired about. Some of the documents related to the transactions of Mr. Rathbone.

"Being asked: From whom did you receive those papers?

"He answers: They were presented to the grand jury by Mr. Barker.

"Being asked: Did the grand jury return those papers to Mr. Barker?

"He answers: They did not.

"Being asked: What was done with those papers?

"He answers: They were handed to the foreman of the grand jury to deliver to the court, with the express understanding that Mr. Barker should have them whenever he should need them. This was so assented to by the district attorney, and promised by him that Mr. Barker should have the benefit of said papers before the court whenever they should be required. The reason of this pledge being taken was because Mr. Barker stated to the grand jury that he was afraid that if he parted with them he should never be able to obtain

them again. The district attorney stated that the court was a safe deposite for those papers, and that Mr. Barker could have them when required. Mr. Barker gave them up with great reluctance. He considered the district attorney as expressing his opinion that it was the duty of the grand jury to retain those papers and hand them to the court.

"Being asked by Mr. Barker: Did I not request the grand jury, during their session, to return said papers to me, and object to their being given to any one else?

"He answers: I think you did. Mr. Barker stated that there was a suit coming on shortly against him for an alleged conspiracy, in which those papers would be of the most essential service to him. Mr. Barker parted with them with great reluctance.

"Being examined by Mr. Hoffman, says: He knows of no schedule of said papers being made; cannot enumerate them. There may have been one or two of them which were not read. Says, there may have been from twelve to fifteen papers, perhaps more, perhaps less; he cannot speak with certainty as to their number; rather thinks there were rising twelve; there were probably three letters from Mr. Eckford.

"Edward Probyn, sworn on the part of Mr. Barker, and being asked: Was you a member of the grand jury for the city and county of New York for the month of June, one thousand eight hundred and twenty seven?

"He answers: He was.

"The examination of Clarkson Crolius being read over to him he says the same is correct, and is a fair statement of what took place before the grand jury on that occasion. Says it was perfectly understood by the grand jury that Mr. Barker was to have the benefit of the papers at the approaching trial for the alleged conspiracy, and that when Mr. Barker objected to leaving his papers with the grand jury, the question was put to him whether he was willing to leave the papers rather than withdraw his complaint? Mr. Barker replied, if he could not have them back on any other terms he would rather leave them, and he left them with extreme reluctance. Mr. Maxwell argued his right to appear before the grand jury at that time, and it was opposed by some of the grand jury.

"Anson G. Phelps, sworn on the part of Mr. Barker, and being asked: Was you a member of the grand jury for the city and county of New York for the month of June, one thousand eight hundred and twenty-seven?

"He answers: I do not recollect the month, but I was a member of the grand jury the fore part of last summer. The testimony of Clarkson Crolius and Edward Probyn being read over to him, he says said testimony is generally correct. The district attorney claimed that these documents belonged to the court, and that as such it was his duty not to allow them

to be returned to Mr. Barker, but that they would at all times be accessible to Mr. Barker on the files of the court.

"George P. Rogers, sworn on the part of Mr. Barker, and asked: Was you not a member of the grand jury in June, one thousand eight hundred and twenty-seven?

"He answers: I was a member of the grand jury for the month of June, one thousand eight hundred and twenty-seven, for the city and county of New York. The testimony of Clarkson Crolins, Edward Probyn, and Anson G. Phelps, being read over to him at his request, he says it is generally correct throughout and is substantially true. Mr. Maxwell was present, and insisted upon his right to be present, before the grand jury. Some of the jury were very much opposed to it. There was some discussion among the jury. There was a considerable number of papers laid before the grand jury by Mr. Barker; they were handed to the foreman. Mr. Barker objected very strongly to their being retained by the jury and kept from him. These papers were handed to the court. The district attorney told the foreman of the grand jury to retain them and hand them to the court, and not to return them to Mr. Barker. Witness thought they were to become a record of the court, and that the parties could have reference to them whenever they might want them, or copies of them, by application to the court.

"Hugh Maxwell, sworn on the part of Mr. Barker, and being asked: Have you seen, since the failure of the Life and Fire Insurance Company, sundry original letters, in the handwriting of Henry Eckford, addressed to Jacob Barker, or J. Barker?

"He answers: I have.

"Being asked: Have you had them in your possession?

"He answers: I have.

"Being asked: Were they in your possession in the month of June, one thousand eight hundred and twenty-seven, during the trial of Mr. Barker for an alleged conspiracy?

"He answers: They were in my possession at one time, having been procured by me from the clerk of the court, Mr. Hatfield, to whom they had been given by the grand jury.

"Being asked: What is meant by one time?

"He answers: Part of them were in my possession, I think, before the trial, and all of them about the time of the trial.

"Being asked: Were all, or any of them, in your possession at any time during the trial?

"He answers: They were all in my possession, I believe, at that time.

"Being asked: Did Mr. Barker apply to you to produce them on that trial?

"He answers: Mr. Barker, or somebody else, spoke to me about them, and I referred them to Mr. Hatfield, supposing I had returned them to Mr. Hatfield.

"Being asked: Did not Mr. Barker apply in person?

"He answers: I think he did; and that some one else came with a subpoena *duces tecum*.

"Being asked: Were they produced on that trial?

"He answers: I believe they were not, and that no other application was made on the subject; and he says, if the mistake had been explained, they would have been exhibited; they were in court at the time in the bundle of papers in my possession.

"Being asked: When you say that they had been given to Mr. Hatfield, the clerk, by the grand jury, do you mean to say that of your own knowledge, or from the information of others?

"He answers: I infer it because it was the ordinary course of business for the grand jury to return papers to the clerk, and I applied to him for them.

"Being asked: Do you know how the grand jury came in possession of the said letters from Henry Eckford?

"He answers: I decline answering this question, because my information was officially obtained.

"Being asked: Was you informed that the grand jury had a special meeting of an afternoon, towards the close of the session, immediately preceding the delivery of said letters to the clerk, to hear a complaint from Mr. Barker against Richard Riker and William P. Rathbone, and others?

"He declines answering for the reasons above assigned.

"Being asked: Did you not go to that grand jury, and find Mr. Barker there, and demand to be present during his complaint?

"He answers as last before said.

"Being asked: Did not the grand jury decide that you had no right to be present at the time Mr. Barker was making his complaint, and did you not retire in consequence thereof, first demanding of them to retain whatever papers Mr. Barker should present in support of his complaint?

"He answers as last aforesaid.

"Being asked: Have you been retained by the Life and Fire Insurance Company since the failure of said company?

"He answers: I was employed as counsel some two or three weeks before the indictments were found against the individuals connected with that company, by or on behalf of said company; it was by letter from Mr. Vermilyea, or some one of the directors or officers of said company; and upon Mr. Lawrence and Mr. Hoffman's being appointed receivers of said company. I called on Mr. Lawrence and informed him I had been so retained. I am inclined to think, and am certain, the retainer was sent to me after the failure of said company.

"Being asked: Have you brought with you a letter from Henry Eckford to Jacob Barker, bearing date on or about the seventh day of May, one thousand eight hundred and twenty-six, and three other letters from said Eckford to said Barker, of the same year; also the several papers which in the late trials for conspiracy were denominated the Rathbone papers; also a receipt, bearing date on or about May the tenth, one thousand eight hundred and twenty-six, for one thousand shares Fulton Bank stock, signed H. Eckford & Co., or Henry Eckford & Co.?"

"He answers: The last paper I do not recollect ever to have seen. With respect to the others, they are in the possession of Mr. Hatfield, the clerk of the said court, as I believe. They are not in my possession. The letters referred to were left with Mr. Hatfield some two or three weeks ago. The four papers, denominated the Rathbone papers, were left with him this morning, since the service of the subpoena *duces tecum* in this cause, the clerk being, in the opinion of witness, the proper officer to produce papers.

"Being asked: Was Mr. Hatfield clerk of the court where the conspiracy trial aforesaid took place, in June, one thousand eight hundred and twenty-seven, when the papers were demanded as aforesaid?"

"He answers: Mr. Hatfield was not clerk of the court where the cause was tried, Mr. Fairlie was.

"Here Mr. Maxwell required the questions to be reduced to writing. To give time to prepare them he was suffered to depart. Not attending at the next meeting, a new subpoena was sent him; still he did not attend, and all the efforts of Mr. Barker to induce him to give further attendance before the master in chancery have proved unavailing.

"Richard Hatfield, sworn on the part of Mr. Barker, produces six original letters from Henry Eckford to Jacob Barker, and one from the same, dated July twenty-ninth, no direction. Says: He believes said letters to be in the hand writing and signature of Henry Eckford, with the exception of the one dated the thirteenth September, one thousand eight hundred and twenty-six. The body of this letter is in the hand writing of some other person, but the signature he believes to be Mr. Eckford's—has seen Mr. Eckford write once or twice, perhaps more, and he believes them to be Mr. Eckford's. The copies produced and left by witness are true copies of said originals.

"Mr. Hatfield again called, by Mr. Barker, and being asked: From whom did you receive the letters alluded to in your former examination?"

"He answers: I received them from the grand jury, in May or June, one thousand eight hundred and twenty-seven, I believe, or thereabouts, with other papers.

"Being asked: Have they remained in your possession ever since?"

"He answers: He thinks on the very day they were delivered, but is not certain as to the day, but, at any rate, within a very few days thereafter, he delivered to Mr. Maxwell, at his request, six letters purporting to be from Henry Eckford to Jacob Barker, together with a deposition of Mr. Barker.

"Being asked: When did you receive them back from Mr. Maxwell?"

"He answers: About two or three weeks past, he thinks.

"Being asked: If you can particularize which of the seven letters produced by you compose the six referred to as above?"

"He answers: He cannot say which.

"Being asked: Did you receive from Mr. Maxwell the seventh letter with the six so returned?"

"He answers: I received from Mr. Maxwell, or from his clerk, a number of letters, which I supposed to be the same I had delivered to him; there were seven letters so delivered to witness, as the witness found upon examination here before the master, and not before.

"Being asked: Was you served with a subpoena *duces tecum*, on behalf of Mr. Barker, to produce those letters in court on the conspiracy trial, in June, one thousand eight hundred and twenty-seven, at the trial of Mr. Barker for an alleged conspiracy?"

"He answers: He was served with such subpoena to produce certain letters, he presumes those inquired about.

"Being asked: Did you not appear in court on that trial, and inform Mr. Barker that you had no such papers in your possession?"

"He answers: He did.

"Being asked: Did you not at that time inform the district attorney that such subpoena had been served on you, and that you, the witness, had not the papers, but that he, the district attorney, had them?"

"He answers: He did.

"Being asked: Did Mr. Maxwell on that occasion deny having them?"

"He answers: I think he did at first, but afterwards, at the same interview, he, the district attorney, became satisfied that he, the district attorney, had them, as witness believes.

"Being asked: Do you know the handwriting of the endorsement on a letter from H. Eckford, which is not addressed to Jacob Barker or any other person, which letter is before referred to in your previous examination, and bears date July the twenty-ninth, one thousand eight hundred and twenty-six?"

"He answers: He cannot say he does, but he believes it to be Mr. Colden's.

"Mr. Hatfield again called by Mr. Barker, and asked: When you say you delivered the letters from Mr. Eckford, how do you mean to be understood?"

"He answers: Mr. Maxwell asked me for Barker's papers, received from the grand jury, the same day, or very soon thereafter, on which they were received from the grand jury—I think it was in court where they were received—I handed him the bundle to look at; he selected out the letters of Mr. Eckford, and was about taking them away, leaving the others. I requested him to stop until I could take a list of them. He did so; I made a memorandum on the bundle that six letters from Henry Eckford to Mr. Barker had been taken out and delivered to the district attorney, with Mr. Barker's deposition, or words to that effect.

"Being asked: Did Mr. Maxwell leave some papers with you, on Friday, the twenty-fifth day of January, one thousand eight hundred and twenty-eight, denominated the Rathbone papers? and how many?

"He answers: He left four papers with me, marked 1, 2, 3, 4.

"Being asked: Did Mr. Maxwell require a receipt for said papers?

"He answers: He did; I gave it.

"Being asked: Were those papers ever in your possession before?

"He answers: Never before.

"Being asked: Were they not among any papers previously filed by you as clerk?

"He answers: They were not.

The reader will observe, that Mr. Maxwell, under the solemnity of his oath, says: "If the mistake had been explained, they would have been exhibited;" and that Mr. Hatfield, under the solemnity of his oath, says, "That on receiving the subpoena to produce the papers, he went into the court, during the trial of Mr. Barker, and informed the district attorney that he, Hatfield, had them not, but that he, the district attorney, had them." Thus, we see, the alleged mistake was explained, and yet the papers were not produced, and to believe they were forgotten requires an uncommon share of charity; and in forming an opinion on this solemn point, the mind is irresistibly led to review the whole conduct of the district attorney in the case, especially the manner in which he obtained the papers, the solemn promise made to the grand jury that the papers should be produced on trial, the unlawful manner of removing them from the files of the court, the indignity with which he treated the supreme court in defying their authority, by telling them he would not submit to its exercise, when they refused to allow the cause to go back to the court of Oyer and Terminer, and by subsequently applying to the grand jury for new in-

dictments to enable him to carry that defiance into effect. The few individuals who have contributed their money towards the purchase of a service of plate for the district attorney are requested to consider these things, and also to read the preceding testimony, that they may know the character and conduct that they have undertaken to sustain.

When I detected and exposed the appalling fact that the district attorney had accepted of three hundred dollars from Mr. Eckford, and other sums from divers others of the indicted, immediately after the first trial, it was attempted by Mr. Maxwell or his friend, through the columns of the Enquirer, to induce the public to believe that the letters from Mr. Eckford, of which the district attorney deprived me, were of no consequence; I ask the reader to consider that of the seventh of May, and also that of 21st July, which are in the words following:

"NEW YORK, May 7, 1826.

"DEAR SIR: In consequence of advice from Baltimore, it became necessary for me to go on to-day. Have the goodness to send me, by to-day's mail, the papers you talked of. It will be 12 o'clock to-morrow before I leave Philadelphia. You will have the goodness to give such aid as you can in completing the arrangement with Mr. Spencer.

"Your friend,

"H. ECKFORD.

"JACOB BARKER, esq.

"Directed, *Jacob Barker, esq.,*

"Present.

"A true copy,

"R. HATFIELD."

"NEW YORK, July 21, 1826.

"DEAR SIR: If you can obtain ten thousand dollars for the Morris, I will guarantee it. Mr. Bayard will hand you the notes and bonds for \$25,000—it will accommodate very much.

"Yours, &c.,

"H. E."

"10 will be wanted to-day, and 5 probably to-morrow, and 5 when wanted after. You had better negotiate this with Mr. Bayard.

"Directed to *Jacob Barker, esq.*

"A true copy,

"R. HATFIELD."

"*Matthew Reed*, sworn on the part of Mr. Barker, and being asked: Was you president of the Tradesmen's Bank, in June and July, one thousand eight hundred and twenty-six?

"He answers: He was then, and for more than a year previous.

"Being asked: Was William P. Rathbone elected a director of the Tradesmen's Bank, on

the third of July, one thousand eight hundred and twenty-six?

"He answers: He was.

"Being asked: Were you both directors of the Life and Fire Insurance Company?

"He answers: Witness thinks he was, and he believes William P. Rathbone was, during June and July, one thousand eight hundred and twenty-six, but he never met him there.

"Being asked: Were rising four thousand shares of Tradesmen's Bank stock transferred to William P. Rathbone, in July, one thousand eight hundred and twenty-six?

"He answered: There were.

"Being asked: Did William P. Rathbone become indebted to said bank for a corresponding amount, at the same time?

"He answers: A loan was agreed to be given him for a corresponding amount, at the same time, estimating the stock at par.

"Being asked: Was not a Life and Fire bond received, for about two hundred and sixty thousand dollars, by said bank, as collateral security for such indebtedness, by said Rathbone?

"He answers: There was a bond received, which, he thinks, was for two hundred and sixty-two thousand dollars, in addition to which, rising four thousand shares of Tradesmen's Bank stock stood in Rathbone's name, which it was agreed between the committee of the bank, of which witness was one, and Rathbone, should not be transferred.

"Being asked: Was Rathbone's account settled by Gouverneur with the bank, and was all the stock which had been transferred to Rathbone delivered to the bank?

"He answers: The account was so settled, and the stock so delivered.

"Being asked: Did the stock so delivered to the bank embrace eight hundred shares which had been transferred by Rathbone to Seth Sturtevant?

"He answers: It did.

"Being asked: Did you make the bargain for the sale of the whole of the stock transferred to Rathbone?

"He answers: He did.

"Being asked: With whom?

"He answers: With Mr. M. L. Davis, as agent, as he (Davis) said, and not himself (Davis) interested a shilling.

"Being asked: Did he tell you for whom he made such purchase?

"He answers: He did not in distinct terms, but gave him to understand, and in such manner that Mr. Davis could not but have known at the time the impression made on witness' mind, which was, that Davis had been acting in the business as agent of Mr. Eckford. His reasons for thinking so were, that Mr. Davis previously informed him he had consulted with Mr. Eckford relative to said purchase, and that about the time of concluding the purchase, Mr. Davis told witness he had to consult two persons, who were all that knew of the negotiation

for the purchase, except Mr. Davis. Witness then asked Mr. Davis, who those persons were? to which Mr. Davis replied, one is William P. Rathbone, and hesitated about naming the other, when witness said the other must be Mr. Eckford; and witness said so because Davis had previously told him that he had consulted Mr. Eckford. Upon witness naming Mr. Eckford, Mr. Davis smiled, and confirmed the impression upon witness' mind, that he was acting for Mr. Eckford.

"Being asked: Did Mr. Davis enjoin upon you not to let Mr. Barker know anything about the purchase of the said bank?

"He answers: He enjoined him not to let any one know about it, but did not mention Mr. Barker in particular, further than saying Mr. Barker knew nothing about it.

"Being asked: Did you ever have any conversation with Mr. Barker relative to the purchase or sale of said bank stock?

"He answers: Never.

"Being asked: Did Josiah Hedden call upon you to obtain a contract for the purchase of the Tradesmen's Bank, after the recent indictments for alleged conspiracy?

"He answers: He did.

"Being asked: Did not Mr. Hedden tell you, that if Mr. Barker could be convicted, Mr. Maxwell would be satisfied, and all the rest would be let off?

"Witness answers: He did tell him so, but it was at a previous conversation to the one in which he applied for a contract.

"Being asked: Did you not reply to Mr. Hedden, that you would not give up the contract to be used against Mr. Barker, without being called on the stand as a witness, where you could explain it, and how it came to your hands, and, by the God that made you, Barker had nothing to do with it?

"He answers: That he held such conversation applicable to a paper in witness' possession, which Hedden alleged that he knew witness was in possession of, which paper purported to be a contract for the purchase and sale of the aforesaid stock of the Tradesmen's Bank, but which had not been executed by witness; and told Mr. Hedden, that I would not part with it to be used to the prejudice of Mr. Barker, excepting I was called as a witness to explain how it came into my hands. Mr. Davis told me that Mr. Barker knew nothing about the purchase of the bank, and, by the God that made me, it shall never be used, without an explanation, to the injury of Mr. Barker.

"Being asked: Did you not afterwards meet Mr. Maxwell at Hedden's house?

"Witness answers: He did meet him there, but he does not know whether it was before or after the aforesaid application by Mr. Hedden.

"Being asked: Did Mr. Maxwell say to you at that time, that he considered you innocent of the charges made against you in relation to the Tradesmen's Bank?

"He answers: Mr. Maxwell said he was perfectly satisfied with witness' conduct in relation to the Tradesmen's Bank, and that he should discharge the indictment; witness says it was in the presence of Mrs. Hedden.

"Being asked: Did the said paper, for which Hedden applied, mention Mr. Barker's name, or anything to lead you to suppose that he, Barker, had anything to do with the purchase of the said stock in the Tradesmen's Bank?

"He answers: It did not.

"Being further asked by Mr. Barker: Did some of the stockholders of the Tradesmen's Bank meet at your house on the subject of disposing of their stock as aforesaid; if yea, when, and who were they, and what was done?

"He answers: That about the middle of June, 1826, he thinks it was on the evening of the 14th, a number of stockholders met at his house, when he stated to them that he had been offered 24 per cent., and to retain the dividend of 4 per cent. then about to be declared. The payment as before stated, or, if we preferred it, (in lieu of the Life and Fire bonds); could have the post notes of the Morris Canal and Banking Company, payable on the 15th July then ensuing; and that he felt it his duty to submit said proposition to them for their consideration. That he then left the room for a few minutes, and on his return was informed that they had concluded to dispose of their stock, in amount \$300,000, including the stock of one other person not then present, each retaining twenty-eight shares, excepting the honorable Richard Riker, who retained thirty shares. They then authorized the honorable R. Riker, Judah Hammond, esq., and witness to dispose of our stock in the way and manner before mentioned.

"Being asked by Mr. Barker: Are the minutes of the meeting referred to in writing; and, if so, are they in your possession, and will you produce them?

"He answers: I shall decline answering the question, on the ground that I have interest depending which may be materially affected.

"November 6.—The master ruled that Mr. Reed is bound to answer the question asked by Mr. Barker on the 5th instant, if the same has a material bearing on the subject under consideration. Mr. Barker states that it has a material bearing on the paper marked N, filed on the 3d instant.

"Mr. Reed then answers, and says: That the minutes inquired about are in writing, and produces a paper, which he requires to be re-delivered to him, and which is as follows:

"*Resolved*, That the directors here present will agree to sell their stock in the Tradesmen's Bank at 28 per cent. advance, provided a majority assent thereto.

"*Resolved*, That 6,394 shares be sold:

M. Reed.....	1,522
A. Mann.....	325

Mr. Mount.....	300
Mr. Schureman.....	225
R. Munson.....	220
R. Riker.....	480
J. Hammond.....	425
Mr. Purdy.....	295
R. Tillotson.....	439
Mr. Baker.....	310
Mr. Boyd.....	603
Mr. Field.....	600
Mr. Gouverneur.....	550
Mr. Bowne.....	100

6,394

"*Resolved*, That the above be secured to the respective persons above named, and at the discretion of the following committee.

"*Resolved*, That the surplus of 394 shares be retained by the said directors in equal proportions.

"ALDERMAN REED,

"J. HAMMOND,

"R. RIKER,

"*Committee.*"

"Being asked: In whose handwriting is the said paper or minute?

"He answers: In the handwriting of Richard Riker, esq. The persons therein named were all present except Rodman Bowne, and as to him he cannot speak with certainty. They all agreed to the sale of said stock, he believes, and witness paid over to each of them, individually, the premium received as before stated. Says Matthew L. Davis called at witness' house and paid the premium, with the interest thereon.

"*Richard Riker*, being called by Mr. Barker, and asked: Was Matthew Reed authorized by yourself and others to sell a certain number of shares in the Tradesmen's Bank, in 1826?

"He answers: I authorized Mr. Reed to bind myself; I do not know what others did.

"Being asked: Was such authority in writing?

"He answers: I do not recollect; I am under an impression it was in writing; at all events I was bound by my promise.

"Being asked: Was a contract for the sale of that stock reduced to writing, between Matthew Reed, purporting to be of one part, and certain other persons of the other part?

"He answers: I never knew of such a thing, until after the difficulties in the bank arose; then Mr. Reed showed me such a paper.

"Being asked: Did Mr. Reed deliver said paper to you?

"He answers: Mr. Reed has assured me he did. I may be mistaken as to its being a contract for the sale of the stock.

"Being asked: Will you search for said paper, and if you find it, will you leave it with the master?

"He answers: I will search for it, and will inform the master.

"Being shown the copy of certain resolutions, produced by Mr. Reed, purporting to be the record of certain proceedings at Mr. Reed's house, and entered on the master's minutes of the 6th inst., and asked: Did you attend said meeting, and did the persons therein named also attend that meeting, and was the object of the meeting as specified in said paper?

"He answers: I did attend at Mr. Reed's; it was probably the meeting referred to, and most, if not all the gentlemen named were present, and it related to the sale of the Tradesmen's Bank stock.

"*Richard Riker*, being again called, and asked: Have you searched for the paper, referred to by you in your former examination, as a contract for the sale of certain stock of the Tradesmen's Bank, and have you found it?

"He answers: He has searched for it, and he has found it; that he believes it to be the paper referred to, and has it now with him; he received the paper, as he verily believes, from Matthew Reed, late president of the Tradesmen's Bank.

"Mr. Barker then asked if he would produce it, to which the said witness answered: That he received it from Mr. Reed in confidence, and, as witness understood, for the purpose of advisement, and as his *counsel*; and he, witness, therefore respectfully submits to the master, whether he shall return said paper to Mr. Reed, now here present, to whose inspection the witness has submitted the paper, or whether he shall lay it immediately before the master.

"Being asked by Mr. Barker: Did not Mr. Reed inform you that he had no objection to your producing said paper before the master, as an exhibit in this cause?

"The witness answers: That Mr. Barker, in the presence of the witness, and of Mr. Murray Hoffman, and of Mr. Selden, did ask, in substance, of Mr. Reed, whether he had any objections that said paper should be produced by witness, to which Mr. Reed replied, in the presence of said persons, that he had looked at the papers and had none.

"The master ruled that the witness must either produce such paper, or deliver it to Mr. Reed; whereupon witness delivered forthwith said paper to Mr. Reed.

"Mr. Reed being called, then produced said paper, marked R. R. by said Richard Riker, in words following:

"*Paper R. R.*

"This is to certify, that I, Matthew Reed, this day sell to Samuel L. Gouverneur and Samuel Cox, six thousand shares of the capital stock of the Tradesmen's Bank, at one hundred and twenty-eight per cent. for the following payments, viz.: ten per cent. cash, on or before the 26th instant; also fourteen per cent. at the same time, in Life and Fire bonds, or post notes of the Morris Canal and Banking Company,

payable on or before the 15th day of July next ensuing, and four per cent., being the dividend on the 1st day of July next, and the balance, say one hundred per cent., on or before the fifth day of July next, or that notes be substituted to relieve notes given for loans on said stock, by myself and others, whom I may hereafter designate; and it is further agreed, that when the two first above-mentioned payments of twenty-four per cent. is made, that I furnish irrevocable proxies for the said purchaser, Samuel Cox, to vote on the said six thousand shares, at the next election for directors of the said bank, say on the 3d of July next, and also a power to transfer said stock, on the fifth day of July, provided the whole of the foregoing payments, in all, one hundred and twenty-eight per cent. has been complied with.

"Now we, Samuel L. Gouverneur and Samuel Cox, do agree to the above, in each of its details, and by these presents do firmly agree with Matthew Reed faithfully to perform the payments as before mentioned, binding ourselves, our heirs, executors, administrators, and assigns.

"In testimony whereof, we, jointly with him, set our hands and seals, this 21st June, 1826.

"MW. REED, [L. s.]

"SAML. L. GOUVERNEUR, [L. s.]

"SAMUEL COX, [L. s.]

"*Mem.*—Agreement made before signing. Interest, at seven per cent., to be allowed on the whole of the payments from the fifteenth day of June instant.

"MW. REED, [L. s.]

"SAML. L. GOUVERNEUR, [L. s.]

"SAMUEL COX, [L. s.]

"Received, New York, 26th June, 1826, on the above contract, thirty thousand dollars, it being ten per cent., and bonds and cash, forty-two thousand dollars, it being fourteen per cent., one hundred and one dollars and fifty cents interest on the first ten per cent., and also on the four per cent. dividend.

"MW. REED.

"*Andrew S. Barker*, being duly affirmed on the part of the defendant, Jacob Barker, and examined by him, says: That he is the son of the said Jacob Barker. Says he left New York on Saturday, the 10th June, 1826, with his father, mother, and some other of their children, for Newport, in the State of Rhode Island; they went in a steamboat, and he thinks it was the Connecticut, Captain Comstock. From Newport they all went to New Bedford by stage, and from thence by water to Nantucket. His father and mother remained at Nantucket until about June 20, 1826, when they departed from Nantucket for New Bedford, he thinks, leaving witness at Nantucket. Witness is confident as to the periods above mentioned, because he, the witness, remained at Nantucket, to attend a great sheep-shearing at the island, which took

place the latter part of said month of June, and after his father left them, as above stated.

"*Strong Sturges*, being called by Mr. Barker, and sworn, says: That Mr. Barker left New York in June, 1826, on or about the 10th of that month—it was not after the 10th—for Nantucket, via Newport, in the steamboat Connecticut, and returned on or about the 22d of the same month.

"*F. G. Halleck*, being called by Mr. Barker, and sworn, says: Mr. Barker left New York for Nantucket on the 10th June, 1826, and was gone about a fortnight.

"NOVEMBER 20.—Matthew Reed again called by Mr. Barker, and asked: Do you hold the written authority of the parties to the sale of the Tradesmen's Bank, heretofore testified to? If yea, will you produce it?

"He answers: I was authorized, in writing, to sell the said stock in the Tradesmen's Bank by certain individuals. I consider it a private paper. I cannot produce it unless ordered by the master so to do. Master calls upon Mr. Barker to make affidavit of the materiality of said paper, which was done and filed, in words following:

"IN CHANCERY.

"Henry Barclay and others, }

vs.

"Jacob Barker and others. }

"*State of New York, ss.*—Jacob Barker, the above named defendant, being duly affirmed, saith: That a certain paper, referred to by Matthew Reed, as being a written authority from certain persons to sell stock of the Tradesmen's Bank, is, in informant's opinion and belief, material in matters now in question before the master.

"JACOB BARKER.

"Affirmed, this 20th November, 1828, before me,

"THOS. BOLTON,

"*Master in Chancery.*

"The master rules it must be produced.

"The paper is produced and filed, marked M. R.

"Being asked: Are the signatures in the handwriting of the persons whose names appear to said paper?

"He answers: They are.

"Being asked: Are the word and signatures 'New York, 19th June, 1826,' in the handwriting of Richard Riker?

"He answers: I think it is, and was written at the time it bears date. I believe I saw him write it.

"*Paper M. R.*

"We, the subscribers, do hereby authorize Matthew Reed to sell and dispose of our stock in the Tradesmen's Bank, the number of shares set opposite our respective names, at twenty-eight per cent. above par value, with interest, from and after the 15th day of June, (instant.)

And we do agree to furnish proxies for the purchaser to vote on the same at the next election for directors of said bank, which election is fixed for the 3d day of July next. Payments we agree to accept as follows, viz: Ten per cent. on the 26th day of June (instant) cash; fourteen per cent. same day in Life and Fire bonds or post-notes of the Morris Canal and Banking Company, payable on or before the fifteenth day of July next ensuing, and four per cent., the dividend on the stock, payable on the 1st day of July next, and the balance one hundred per cent., on or before the fifth day of July next, or that notes be substituted in every and all cases to relieve our notes when given for loans on said stocks; and that on the payment of the two first mentioned above sums, say making twenty-four per cent., that we do agree to furnish for the purchaser irrevocable proxies to vote on the stock, and a power to transfer the same on the 5th day of July next, when the last instalment of one hundred per cent., as above mentioned, shall have been complied with.

"NEW YORK, June 19, 1826.

Names.	Original No. of shares.	Shares retained.	Shares sold.	Amount at par.	10 per cent.	14 per cent.	4 per cent.	28 per cent.	128 per cent.
A. A. Mann.....	825	23	297	\$14,850	\$1,485	\$2,079	\$594	\$4,118	\$17,008
Gibbert S. Mount.....	800	23	197	13,000	1,300	1,814	364	3,508	17,008
Nicholas Schureman.....	225	23	181	9,500	950	1,314	284	2,728	12,608
Reuben Munson.....	225	23	192	9,500	950	1,314	284	2,728	12,608
R. Riker.....	480	30	160	22,600	2,260	3,160	900	8,800	29,408
J. Hammond.....	425	23	397	19,850	1,985	2,779	794	7,734	29,408
Samuel Purdy.....	255	23	261	13,350	1,335	1,869	522	5,734	26,804
Robert Willson.....	480	23	261	20,600	2,060	2,884	822	8,948	26,804
David Baker.....	810	23	722	41,100	4,110	5,754	1,614	15,150	58,008
J. J. Boyl.....	668	23	572	28,100	2,810	3,934	1,114	10,008	36,608
John Field.....	668	23	572	28,100	2,810	3,934	1,114	10,008	36,608
Samuel L. Gouverneur.....	100	23	72	4,500	450	634	144	1,308	5,408
Rodman Bowne.....	1,322	23	1,494	74,700	7,470	10,458	2,998	20,916	95,616
	6,394	394	6,000	300,000	30,000	42,000	12,000	84,000	384,000

"*Matthew Reed*, being called again and asked by

Mr. Barker to state, more precisely, the amount received for premium on the stock of the Tradesmen's Bank, sold in 1826, than when formerly examined on the subject.

He answers: "The agreement was for 6,000 shares of stock, which, at par, amount to \$300,000, on which we were to receive 28 per cent. premium."

It appears by the proceedings of the midnight meeting, in the handwriting of the recorder, that there were fourteen persons present, who clubbed 6,394 shares of stock; the unknown purchaser would only take a sufficiency to control the bank, say 6,000 shares; the remaining 394 the sellers agreed to divide equally, when the recorder makes the following calculation:

$$\begin{array}{r} 14)394(28 \\ 28 \\ \hline 114 \\ 112 \\ \hline 2 \end{array}$$

By reference to the power it will be seen that these *fourteen directors* agree each to retain 28 shares, and the recorder also agrees to take those two remaining shares, in addition to the 28—in all 30.

"*Samuel Cox* again called by Mr. Barker and desired to look at the paper marked R. R., filed on the 19th instant, and asked: Did you sign said paper?

"He answers: I did.

"Being asked: Was the stock therein mentioned purchased in part or in whole on your account?

"He answers: It was not.

"Being asked: At whose instance did you sign that contract?

"He answers: I am not very positive, but I think I am not mistaken when I say it was at the instance of Mr. Reed, the president of the bank, though I have a faint recollection about it. It might have been at the instance of Mr. Gouverneur, or Mr. Davis, though I think it was Mr. Reed.

"Being asked: Was any portion of this stock transferred by the sellers, and to whom?

"He answers: About 4,800 shares were transferred to W. P. Rathbone; but whether directly or not he cannot say.

"Being asked: Did you mention to Jacob Barker that you had signed, or was a party to, a contract for the purchase of the Tradesmen's Bank, or the stock thereof, before mentioned?

"He answers: Never, to my recollection or belief.

"Being asked: Did you ever vote on the proxy of the sellers, at the election for directors of said bank, on or about July 3, 1826;

and if so, from whom did you receive the list of directors for whom you voted?

"He answers: I did so vote. The proxies were brought to me by a boy from the office of the Life and Fire Insurance Company, enclosed in an envelope, directed to me as cashier of the bank, in the handwriting of Matthew L. Davis. Matthew Reed, I believe, furnished me with a list of the names to be voted for, which, I think, I had printed. I wished to have Henry Remsen's name on said list; it was objected to, and, I think, by Matthew L. Davis. It was not done. Mr. Davis told me some persons interested in said stock objected to Mr. Remsen.

William P. Rathbone being sworn, and asked: Had Mr. Barker any interest in, knowledge of, or agency about, the purchase of four or five thousand shares of Tradesmen's Bank stock, in the summer of one thousand eight hundred and twenty-six, which was transferred to your name?

He answers: None that I know of.

Being asked: Was Mr. Barker ever consulted as to the selection or appointment of new directors of said bank, which took place about that time?

He answers: I never heard that he was, nor do I believe that he was.

Did you transfer eight hundred shares of Tradesmen's Bank stock to Seth Sturtevant, on or about the twelfth day of July, one thousand eight hundred and twenty-six?

He answers: I did.

Being asked: Was it done at the request of Mr. Eckford?

He answers: It was.

Being asked: Did you deliver to Mr. Barker certificates, in the name of Seth Sturtevant, for the said eight hundred shares of stock?

He answers: I did, by the request of Henry Eckford.

Being asked: Did you ever have any conversation with Mr. Barker, in relation to said stock, prior to the delivery of said certificates?

He answers: not one word.

Being asked: Had Mr. Barker any interest in the exchange of the two thousand shares of Morris Canal stock, for the twenty-five hundred shares of Fulton Bank stock, which took place in May, one thousand eight hundred and twenty-six?

He answers: None that I know of, except his commissions which might grow out of selling, buying, and hypothecating, the Fulton Bank stock.

Being asked: Was not the exchange above spoken of made expressly for the accommodation of the Life and Fire Insurance Company?

He answers: I so understood it.

Being asked: Did you apply to Mr. Barker for advice and assistance in the business, by the direction of Mr. Eckford?

He answers: Mr. Eckford directed, when he left town, about the seventh of May, one thou-

sand eight hundred and twenty-six, that the Fulton Bank stock, which he had previously agreed for, should be placed in the hands of Mr. Barker when received; and I therefore applied to him, as aforesaid, and delivered into his hands the aforesaid two thousand shares of Fulton Bank stock, transferred to Mr. Thurston, by the order of Mr. Barker.

Being asked: Had Mr. Barker, to your knowledge, anything to do with the issuing of the 2,500 shares of Morris Canal stock, as principal or agent?

He answers: Not to my knowledge.

"Being asked: Did Mr. Barker, to your knowledge, know that the Life and Fire bonds had been given for the Morris Canal stock until after the same had taken place?

He answers: Not to my knowledge.

"Being asked: Did you or not, as a director of the Life and Fire Insurance Company, in common with the officers and directors of that company, or such of them as were then acting, authorize the issuing of bonds of that company to the amount of \$250,000, in exchange for an equal amount of Morris Canal stock, as a temporary loan for the accommodation of the Life and Fire?

"He answers: I was not present when it was done, but knew it was to be done, and approved of it, and after it was done sanctioned it.

"Being asked: Did you not, as a director of the Morris Canal and Banking Company, sign a resolution, in common with other directors, authorizing the issuing of stock of that company in exchange for Life and Fire bonds, with express reference to the said \$250,000 of stock; and if any, what other security was understood to be given for its return?

"He answers: I did, except it was uncertain whether the stock would be wanted to the amount of one hundred and fifty or two hundred and fifty thousand dollars at the time I signed that resolution; and it was my understanding that Henry Eckford, esq., was to guarantee the return of the Morris Canal stock, by which return the said bonds would be cancelled and returned to the Life and Fire Insurance Company.

"Being asked: Did you apply to Mr. Barker, in the absence of Mr. Eckford, for advice in relation to the phraseology of a contract or guaranty touching the exchange or return of said stock, and when?

"He answers: According to my recollection, I called on Mr. Barker on the morning of the tenth of May, one thousand eight hundred and twenty-six, and asked him to look at a paper which I *had previously drawn* at the office of the Life and Fire Insurance Company, and to see if it sufficiently explained the object it professed. Mr. Barker looked over it, and remarked it was a large amount, was the guaranty of Mr. Eckford, who was absent, and that a single word might make a variation in its import, and suggested that a clause be added

allowing Mr. Eckford to return the stock in parcels, as might suit the convenience of Mr. Eckford. As it was then drawn, Mr. Barker stated, Mr. Eckford would be obliged to return the whole stock together. Mr. Barker wrote such clause at the bottom or on the back of said paper, and I took said paper away. Witness says he heard said paper read by Mr. Maxwell, the district attorney, on the late conspiracy trials."

When the testimony was about closing, Mr. Riker appeared before the master and made the following explanations, which, in my opinion, afford no justification for the sale of the bank to a concealed purchaser, much less for withdrawing good notes to the amount of two or three hundred thousand dollars, and leaving in lieu thereof the checks of an irresponsible person who had no money in the bank.

"*Richard Riker* again appears and states that, from conversations with Mr. Reed about the time of the agreement to sell the stock of the Tradesmen's Bank, and frequently since, and even to this time, deponent is firmly convinced that Mr. Reed fully believed that Mr. Henry Eckford was the purchaser or principal purchaser of the stock of said bank, agreed to be sold through Mr. Reed, as hereinbefore testified by deponent. He is so convinced because Mr. Reed assigned to deponent several reasons why he thought Mr. Eckford to be such purchaser, among which were that Mr. Eckford no doubt wished to increase his influence in the upper part of the city, and that the control of the bank would greatly enable him to do so; and he, deponent, thinks Mr. Reed said it would be beneficial in his business. The deponent believes that Mr. Reed also referred to Mr. Eckford's business as connected with his ship yards.

"Deponent recollects very well that Mr. Reed mentioned that Mr. Eckford was ambitious. Mr. Reed has frequently agreed with deponent that the stock of said bank, if well managed by Mr. Eckford, under the advantages he possessed, might be made a nine per cent. stock; and witness believes Mr. Reed had no doubt Mr. Eckford was a very wealthy man. Deponent further says that Mr. Reed has not only, as far as this deponent knows, spoken of Mr. Eckford as being the purchaser, as he believed—though he never has said that Mr. Eckford was the purchaser of his own knowledge—yet has at no time intimated, to deponent's knowledge, that any other person was said purchaser. And deponent is fully satisfied that Mr. Reed, as well as this deponent, has frequently declared that Mr. Barker had nothing to do with said purchase, as he or this deponent knew or believed; and, as an additional reason, Mr. Gouverneur, according to the best of this deponent's recollection and belief, in open court, on the first trial, or sub-

sequent to the conspiracy case, testified that Mr. Barker had nothing to do with the purchase of the stock of the Tradesmen's Bank. And this deponent further says that it is his present belief, and that deponent has never concealed from any one the fact, that the deponent believed Mr. Eckford to be the purchaser, and that Mr. Barker had nothing to do with said purchase, though deponent must add that he has never been distinctly informed by Mr. Reed who was the purchaser. Mr. Rathbone attended at the bank and received the transfer of deponent's stock. The witness conceived Mr. Rathbone to be the agent of Mr. Eckford, and that, among other things, greatly confirmed deponent in the belief that Mr. Eckford was the purchaser."

The following persons, who were concerned in managing the business of the companies said to have been defrauded, were also examined in the said chancery suit, they, one and all, testified that Mr. Barker had not had any agency or concern therein: William Bayard, David B. Ogden, Abraham Ogden, S. L. Governor, J. J. Boyd, Matthew L. Davis, Thomas Vermilyea, Wm. P. Rathbone, James T. Tallman, Jacob Clinch, George W. Browne, Mark Spencer, Horatio Kingsland, Geo. W. Gants, and Richard Gilchrist.

On the discovery of the records in the handwriting of Richard Riker, the recorder, of the proceedings of those who divided the \$84,000, the editor of the New York American remarked thus:

"DISCLOSURE OF THE REAL PARTIES TO THE PURCHASE AND SALE OF THE TRADESMEN'S BANK, IN 1826.

"Under this title Mr. Jacob Barker has printed a pamphlet of thirty-six pages, with a view to exonerate himself from the imputation pressed very heavily against him on the conspiracy trials of having been concerned in this (we must call it nefarious) transaction. This pamphlet we have read with attention; and, as an act of justice to one whom we have not, we confess, viewed or spoken of with any partiality, though certainly not with any feelings of personal hostility, we are bound to say that Mr. Barker completely and entirely exonerates himself from any agency in or knowledge of what, as here exposed, appears to us a most gross and abominable proceeding on all hands.

"Mr. Barker, as to himself, satisfactorily establishes an *alibi*. He was not in New York, but at Nantucket, for many days before and during the negotiation that led to this sale. But not only does he prove his own entire innocence and ignorance of this matter, but he has been the instrument of bringing to light such evidence concerning the real nature of,

and actors in, this whole operation as must cover the latter with infamy; and in the case of Mr. Recorder Riker, who was a principal one, must, we would fain hope, drive him from the station which he dishonors. In regard to this functionary, however, and his agency in this affair, we shall have occasion to speak again. At present, our business is to do justice in the transaction in question to Mr. Barker; and we accordingly have as much satisfaction in expressing our conviction that, on this head, he has been unjustly accused and censured, as we always feel a pain when a sense of duty compels us at any time to deal in animadversion and reproach."

A perusal of the testimony elicited in the chancery suit after the termination of the "conspiracy trials" will satisfy the reader as to their true character. It establishes,

1st. That Jacob Barker was to be offered up as a victim for the supposed errors of others.

2d. That Hugh Maxwell, the district attorney, deprived him, in the most illegal and arbitrary manner, of papers which established his freedom from offence.

3d. That Hugh Maxwell had those papers in court during the trial, denying that he had them, and not only refused Mr. Barker the benefit of their use, but kept them long after the trials were all over, and when ordered by the court of chancery to produce them refused to obey the mandate of the court.

4th. That the grand jury were induced to deprive Mr. Barker of his papers by the positive promise of Hugh Maxwell that he should have the benefit of their use on the approaching trial, he asserting that it was the duty of the grand jury, whether they found a bill or not, on the complaint of Mr. Barker, to retain the papers to go before the next grand jury—that they would always be safe on the files of the court, where either party could have access to them.

5th. That the excuse offered by the district attorney for refusing to produce them on the trial of Mr. Barker, namely, that he forgot the papers were in his possession, was of the most extraordinary character. Mr. Hatfield stated, on his oath, that during the trial, being called on by Mr. Barker for his papers, he applied to Maxwell for the letters of Mr. Eckford, which he (Maxwell) took from the file of the court, of which he (Hatfield) was clerk. That Maxwell admitted to him in court, at the very time they were called for, that he had them, although

when first charged by Mr. Hatfield with having them he denied it.

6th. That the district attorney considered himself so far above the law that he disposed himself of those documents, after he was served with a process from the court of chancery to produce them, and otherwise disobeyed the mandate of the court, to escape from which he placed them in the office of the clerk of the court where the conspiracy trials took place; this disposition of the papers was after his difficulties with Mr. Eckford had been renewed, and after it became public that he had received \$300 from that gentleman.

These papers falsified his declaration "that Mr. Eckford had been the victim of others."

8th. That Hugh Maxwell accepted of money from "indicted but untried and unacquitted individuals." The professed object may have been to conduct civil suits for these "indicted but untried and unacquitted individuals," yet these "indicted but untried and unacquitted individuals" were not either of them brought to trial after the receipt of their money.

The district attorney promised to say to his acquaintances "that Mr. Eckford had been the victim of others," and that he would, on all proper occasions, both public and otherwise, state it as his opinion that he considered that Mr. Eckford was justly entitled to the same degree of confidence in society that he enjoyed at any former period, and that he had full confidence in his integrity and honor.

Mr. Eckford demanded a certificate to that effect, which Mr. Maxwell refused to sign, saying in a letter addressed to him, under date of 27th November, 1827: "The circumstances to which I alluded, as inducing the belief that you had been the victim of individuals who had abused your confidence, may, when more severely examined, admit of a less charitable construction."

Mr. Eckford failing to induce Maxwell to put his often repeated declaration on paper over his signature, demanded personal satisfaction, which being refused, published him in the following terms:

"NEW YORK, TUESDAY EVENING,

"December 18, 1827.

"SIR: Your real character is at length unmasked. You have exhibited yourself as a man wholly destitute of truth and honor, and

have, in addition, proved yourself a contemptible poltroon.

"You can only be noticed in future, by gentlemen, as a cowardly retailer of falsehoods, and as the pitiful tool of other artful and vindictive miscreants.

"HENRY ECKFORD.

"HUGH MAXWELL, *New York.*"

The *New York American* of the 21st December, 1827, says that Hugh Maxwell, the district attorney, had Mr. Eckford taken up for sending him a challenge, and William T. McCowen and John P. Decatur, his accomplices, bound over to keep the peace, on which subject an article appeared in the *Literary Cadet* of Providence, of the 2d January, 1828, as follows:

"DUELLING.

"The *New Yorkers* seem much agitated on this subject, and, because a reputed challenge has been sent to a public officer, their moral sense is shocked to the very centre. Our opposition to duelling is not based on so slender a foundation as for it to make any difference by whom a challenge is given, or by whom carried. The thing is wrong, radically wrong, and all those who attempt to lay the least stress on the fact of Mr. Maxwell's being a district attorney, become, unconsciously, the apologists of the dreadful practice. If there is any sting in being branded a coward, poltroon, puppy, liar, and the like, the wax of an attorney's office affords a miserable salve, and he who flies to it for protection, pays the greatest homage at the shrine of duelling.

"If an inquiry is to be tolerated as to the cause, motive, provocation, &c., we should hold public officers to more rigid rules than private citizens, because armed with authority, they would otherwise have the power to oppress the private citizen with impunity; and no oppression is so odious as that practised under the semblance of law and authority.

"If the district attorney of New York did convert the power of his office into an engine of oppression and persecution, if he did overlook those whom he believed had been faulty, and pursued, like a demon, those whom he knew to be faultless, then we say he merits the execration of every good, honest, and honorable citizen. Yet such conduct on the part of the district attorney, would not, in any degree, justify the injured parties in violating, by seeking a duel, alike the laws of God and of man.

"After a careful perusal of the different publications, we agree in opinion with the editor of the *National Advocate*, that Mr. Maxwell 'went off half cocked.' At the same time, it appears to us that Mr. Eckford too willingly sanctions the idea attempted to be put forth by the district attorney, that he, Mr. Eckford, is a weak, simple man, and easily duped by others. Whether he is such or not, he certainly seems,

not to have been aware of the traps of the district attorney, who, finding that the jury would not convict so large a class as he had united in the same bill, followed the example of the boy in the fable, who, when his bundle of sticks was so large that he could not break them, divided and attempted to break them singly or in pairs; and because the sacrifice of Mr. Eckford was deferred until others had been disposed of, he appears to have been lured into neutrality or acquiescence, in the vain hope, that when the district attorney had glutted his vengeance with other victims, he would pacify Mr. Eckford with his gracious certificate.

"All that surprises us is, that Mr. Eckford should not have sooner discovered the trick, and not allowed Mr. Maxwell to have kept him suspended between earth and heaven so long."

Colonel Decatur took the message to Maxwell from Mr. Eckford, demanding satisfaction for his faithlessness; the Colonel returned reporting that Maxwell had replied that Mr. Eckford had better remember that he paid me \$300 to procure the conviction of Barker and be quiet. No, says Eckford, proclaim it to the world. I gave him the money as the unarmed traveller, with a pistol at his breast, hands his purse to the highwayman. Thus the report came first to my knowledge, when I immediately addressed to Maxwell a letter in words and figures following:

"NEW YORK, January 1, 1828.

"SIR: Colonel Decatur stated that, when he called on you in behalf of Mr. Eckford, you told him that you had received three hundred dollars from Mr. Eckford to aid in the late prosecution of Jacob Barker.

"This statement becoming public led to an enquiry of Mr. Eckford if he had joined in a plan for my conviction. He assured me that, although he did write you a letter enclosing three hundred dollars in January last, (which you know was immediately after the illegal verdict,) and although you did receive the money and did keep it, yet that the object of sending it has been misrepresented. The letter in which the money was enclosed, now in your possession, may explain the true object for which the money was paid. Will you please furnish a copy for publication? Mr. Eckford says he has no objection. After you heard all the testimony on the trial you made a most inflammatory speech against Mr. Eckford, and in resisting his motion in December to have his trial postponed, you stated that the offended laws required that there should be no delay; but after the receipt of the three hundred dollars you stated that 'he was made the victim of persons who abused his confidence,' and did not bring on his trial. The source of revenue to yourself was cut off by Mr. Eckford having been placed beyond your reach by a power

above your control; since which you said, in a letter addressed to him under date of the 27th of November last: 'The circumstances to which I alluded as inducing the belief that you had been the victim of individuals who had abused your confidence, may, when more severely examined, admit of a less charitable construction.'

"You having thus taken back your friendly declarations, the motive no longer exists which induced you, in the most arbitrary manner, to get possession of my four letters from Mr. Eckford, and to withhold them in violation of your solemn promise to the grand jury, and to say when they were applied for to be used in a case more important to me THAN LIFE, '*that you had them not, when you had them.*' The motive, I repeat, no longer exists; as those letters prove, in distinct terms, that the part I acted was by Mr. Eckford's direction and at his request, and fully contradicted the impression intended to have been made at the time referred to, when you used my name to Colonel Decatur, and, consequently, when you said that Mr. Eckford had been made the victim of persons who abused his confidence. You will, therefore, be pleased to return the said letters to me without further delay; they are wanted to be used in an investigation now going on in the court of chancery.

"Your obedient servant,

"JACOB BARKER.

"HUGH MAXWELL, *District Attorney.*"

To this letter no reply was made, but on or about the same day, Maxwell, after having kept the money about eleven months, attempted to return it to Eckford; Eckford refused to receive it, when, as I was informed and believe, Maxwell took it to the United States Branch Bank, New York, and deposited it to the credit of Eckford, where it remained when I last heard of it.

The disastrous effects these proceedings had on Mr. Barker's business can be more easily imagined than described; ruined as his fortunes were, he resolutely set about their liquidation, and was enabled to continue his commercial business to some extent; he inclined to that with Russia; he gave the name of Russia to the last ship he had built; he had several ships in that trade—among them was a very fine New York built ship, the "United States."

This ship was lying at anchor at Cronstadt in 1829, when the young emperor, Nicholas, passing by in his barge, on his way to the inspection of his fleet, being attracted by her fine appearance, the boatswain's whistle was sounded, the men peaked their oars, while the emperor took a full view of the vessel; it again sounded, the boat went round the ship, and then landed;

the captain was invited on shore, when the emperor inquired of him if his ship was for sale—if so, what was the price. The reply was, "She was for sale until yesterday, when a charter was obtained, to take a cargo of copper &c., &c., to Bordeaux—price \$50,000; she cannot now be sold without the consent of the charterers." The emperor responded, "I will send down commissioners to inspect the vessel; if they report favorably, I will obtain the consent of the charterers, and give you the required \$50,000 for the ship." On his return to the city, he directed his minister of marine to confer with the charterers; he did so, and stipulated to pay a specified amount for their annulling the charter, provided she, on inspection, should prove satisfactory—allowing three days for the examination. She proved satisfactory. The minister of marine omitting to give the notice within the three days, the cargo was sent down, and the ship commenced loading. The emperor passed again the next day, and perceived her to be a foot and a half deeper in the water than when he resolved to make the purchase. He returned immediately to the city, and sent for the minister of marine from whom he obtained an explanation; in place of directing him to disregard the delay in giving the answer, as a frivolous objection, he directed him to inform the captain that he might proceed to Bordeaux with his cargo; and, as it would be too late to return that season to Russia, go to the United States and procure another cargo, come back with it to Europe, and then return to St. Petersburg, when he would take the ship at the same price. She did return, was received and promptly paid for, the emperor personally superintending the consummation of his bargain.

Such honorable conduct, such attention to business, on the part of the emperor, so rarely manifested by crowned heads, enlisted Mr. Barker's sympathies in his favor, which continued down to the day of his death.

The British and French complain that our sympathies are not with them in their present war; when it commenced the subject was not well understood in America; latterly, there seems to be more light on the subject. The two following articles are given as containing better views of the Russian character than have been heretofore entertained:

[From New Orleans Picayune, November 1, 1854.]

"RUSSIAN MAGNANIMITY.

"In the foreign papers lately received at this office, we find an exceedingly interesting narrative of the circumstances of the wreck of the British steamer *Tiger* in the Black Sea, near Odessa, at the commencement of hostilities by the allies—the captivity of the crew and their treatment in Russia. It is written by Lieutenant Royer, who succeeded to the command on the death of Captain Giffard. It is particularly interesting from the picture which it draws of the liberality and magnanimity with which these prisoners were treated in Russia, and the favorable account which it gives of the high-bred courtesy and generosity of high Russian functionaries, whom the common opinion in this country classes with semi-barbarians.

"When the *Tiger*, having hopelessly grounded, surrendered to the Russians, the officers and crew were landed and conducted to the quarantine ground, where they were handsomely lodged and well provided for in all respects. The government allowance for the boarding of prisoners, which was regulated to suit the physical wants of the abstemious Turk, was immediately found to be too small for English appetites. The authorities instantly trebled it, and there was abundance of the best quality. General Osten Sacken made daily visits of kindness and looked to the supply of their wants, and M^{me} Osten Sacken, his wife, vied with him in consideration and attentions, particularly to the sick, supplying them with delicacies from her own table. When the powder-boy of the *Tiger* died, she had an iron railing constructed around his grave, and trees planted to overshadow it. On the death of a young midshipman, she had a portion of his hair enclosed in a gold locket and sent to his mother. The same kind spirit pervaded all the military officers at Odessa. and Lieutenant Royer says, that the only difficulties experienced were caused by the multiplicity of orders, some of them conflicting with each other, and all springing out of the anxiety to alleviate the condition of the prisoners. They were permitted to draw on their friends in England, for supplies and money, and their bills were negotiated for them.

"The orders of the Emperor for disposing of them, were that the commanding officer should proceed to St. Petersburg, the other officers to be sent as far as Riasan, a town about a hundred miles from Moscow. The four youngest midshipmen were to be sent to the University of Moscow, to be placed under the care of the director there, and to be treated as the other pupils, who are of the noblest families in Russia. By subsequent arrangements, however, a change was effected, and all but thirty of the crew were exchanged at Odessa for Russian prisoners. Lieutenant

Royer, as commanding officer, was sent to St. Petersburg.

"A trait of uncommon consideration for the seamen is also recorded. When they were about to start on their long journey for Riasan, and after their own officers had expressed satisfaction with the clothing provided for them, the Russian authorities gave to each man an extra great coat and an extra pair of thick boots for the journey.

On the arrival of Lieutenant Royer at St. Petersburg, he was treated more like a welcome guest than a prisoner. In his first interview with De Gorouki, the Russian minister of war, the latter addressed him thus: 'Mons. Le Lieutenant, the chances of war have thrown you into a position which places us now in the relation of friends, and I trust in our future intercourse we shall esteem each other as loyal gentlemen.' In this generous spirit he had every indulgence, comfort, and liberty ordered him; and a short time afterwards was personally presented to the Grand Duke Constantine and the Emperor Nicholas.

"His visit to the Grand Duke is pleasantly related. It was made during the temporary absence of the Duke, and while waiting further the Grand Duchess came in without formality, and held a very unaffected conversation with him, and concluded her courtesies by sending him a cup of tea, and the latest English newspaper—in the days of Peter or Catharine, it would have been a pint bumper of raw brandy. The account of the interview with the Grand Duke displays the latter in a very amiable style, unaffectedly courteous, kind, and extremely well informed.

"The interview with the Emperor had an unexpected result, in the unconditional release of Lieutenant Royer from captivity. It was done with so much grace and good humor that we make a long extract, particularly as it describes the personal appearance of the 'terrible' Czar in June last, when, by the British newspaper accounts, he was haggard with care and apprehensions:

"The Emperor was standing in the middle of the room, dressed in the plain dark blue uniform of a general-in-chief, and wore a white enamelled cross at the button-hole on his chest. This, I believe, was the cross of the order of St. George, an honor conferred only upon persons who have rendered important services to their country. I imagine that his Imperial Majesty has not yet assumed the decoration of the highest class of the order, which is won by such men as Paskiewitch, Woronzoff, &c., and which was described to me as different in size to that worn by the Emperor. I expected to see a fine tall man, but was not prepared to find his Imperial Majesty so much superior to the generality of men in height and appearance. He certainly did not look more than fifty, nor were there any particular signs of care on his countenance, at least not more than

one sees in every man of his age. His features were fine and regular, his head bald in the centre, and his eye expressive of mildness, quite in accordance with his words. I was aware that his Majesty spoke both English and French, and hoped that he would address me in my native tongue.

"As I bowed and stepped forward, he addressed me as 'Monsieur le Lieutenant,' and inquired after my health, whether I had got rid of my fever, and how and where I caught it. He asked me about the loss of the Tiger, and inquired why we had not anchored, being so near the land. I replied that the fog was very thick, and that by our reckoning we were some distance from land when the vessel struck. He asked if I was married, made some kind inquiries respecting the family of my late captain, and informed me that Mrs. Giffard had gone to Odessa to join her husband, not having heard of his death. His Imperial Majesty then said that it had been his intention to grant the captain his liberty, but as that was now impossible, he would extend that grace to me as the next in command, and asked me how I should like to go home. I was quite taken aback by this announcement, as, although I had been told at Odessa that I should have my liberty, still I did not anticipate that it would be granted so soon and so freely. I was therefore unprepared to answer the question as to my intended route, and said that I really had not thought of it; upon which His Imperial Majesty burst into a fit of laughter, much amused at my surprise."

[From the New Orleans Delta of November 14, 1854.]

MAGNANIMITY AND BARBARISM.

"One good result of the war, which the allies are now prosecuting against Russia, begins to be quite manifest. It consists in the evident change which British opinion is undergoing in reference to the character of the Russians, their government, their resources, gallantry, &c. For a long time it has been quite the fashion in England, and, of course, it is in this country, where English ideas still exercise a powerful influence, to represent the Russians as a race of barbarians, of ill-used, degraded, servile, ignorant serfs, tyrannized over by a grim and bloodthirsty despot. When the present war broke out, this British prejudice and delusion were augmented and invigorated by national pride, and by a newly excited appetite for military glory, for wars and bloodshed, though the presence of the imperial family of Russia in London, some ten or twelve years ago, dissipated, to a degree, these previous misconceptions; when it became necessary to pander to a mob passion for war, which has instigated the present contest, it was necessary to revive all the old ideas of the barbaric ignorance and brutality of the Russians. When John Bull's prejudice is aroused against a people or nation, he is prepared to believe anything of them.

There are no limits to his credulity; no satiety to his appetite for the horrible; hence the popularity of and general belief in the most absurd stories, which from time to time, since the war broke out, have been invented, it would appear, just to minister to this appetite of the English. All people, especially a strong thinking and feeling one, like the English, dislike to surrender their pet prejudices and cherished passions, to the clearest evidence. They are determined to think, write and fight against the Russians, as a set of savages,—to treat their whole army as Cossacks, and degraded serfs. Woe be to him who attempts to remove this delusion from their minds. Just look at the spectacle recently presented in London, which afforded so striking a proof of the invincible bigotry of even British dignitaries. When the great Sevastopol hoax reached London, and the intelligence was communicated by the Duke of Newcastle to the lord mayor of London, that individual, dressed in his gorgeous official robes, marched at the head of a procession, composed of portly liveried men, preceded by trumpeters dressed in the fashion of four hundred years ago, and, on his arrival at Guildhall, proclaimed to a vast multitude, which had assembled around that building, ‘the glorious triumph of the allies over our *barbaric* foes.’ Thereupon, the crowd, constituting that most enlightened of all tribes, a London mob, yelled and screamed with delight at the victory of Christian civilization and philanthropy over Russian barbarism and brutality. Now whilst this spectacle was being exhibited in the great capital of Great Britain, a young officer of the English navy, who had been captured in the Black Sea, by the Russians, was receiving the congratulations of his friends on his release from captivity. One of his first tasks—for ingratitude is no vice of the English character, on his arrival home—was the vindication of the Russians from this unmerited aspersion of the lord mayor. The letter of Lieutenant Royer is a generous and noble tribute, to a kind and magnanimous enemy. The treatment of the unfortunate officers and men of the *Tiger* by the Russians was marked by a refinement, a gentleness and kindly consideration that have rarely been equalled by the people or officers of any country or government.

“They were received by the emperor and his family as old friends rather than as enemies. The young officers were placed at college in order to continue their studies, the men were taken care of in the most comfortable style; the oldest officer was released; the wounded attended by the highest ladies in the country, and the dead were buried with all the honors and respect that would be accorded to them in their own country. Around their graves enclosures were erected and trees planted by a noble lady.

“The delicate consideration of transmitting the relatives of the deceased medallions con-

taining locks of the hair of their unfortunate friends, crowned the offices of a refined generosity and philanthropy. Nor let it be said that such conduct as this proceeded only from the highest classes of society; the people, the peasantry, all classes displayed a like kind-heartedness and refinement. The following being the concluding portion of Lieut. Royer’s letter describing his treatment by the Russians, conveys a bitter but deserved sarcasm on this whole war,—got up to protect a set of real barbarians, against a people who are giving the most convincing proofs of their progress in all the arts of Christian civilization and of an enlarged philanthropy.

“At first, unacquainted with the Russian character, and apprehensive of ill-treatment in case we were removed to some out-of-the-way place in the interior of the country, the officers resorted to various ingenious contrivances to secrete the spare money they possessed. Some sewed it in the stiff collars of their jackets; others wore the coin in belts around their waists, &c. But that such precautions were perfectly needless will be seen in the sequel. The first lieutenant traversed the whole of Russia, often leaving his portmanteau in the carriage upon the high-road, while reposing at the inn during the night, without losing the smallest trifle. Indeed, the sympathy everywhere shown us was remarkable; and the conduct of our civilized enemies afforded a striking contrast to that of our barbarous allies, to whose assistance our country has generously proceeded. While staying at Constantinople, we were often spat upon in the streets by the Turkish children, who certainly would not have felt such an abhorrence of us if it had not been instilled into them by their parents, who, no doubt, expressed in private feelings which were thus aped and reflected by their little counterparts.”

Some of the securities received from the Life and Fire Insurance Company consisted in mortgages on plantations in Louisiana, which involved Mr. Barker in extensive litigation in that State.

One of the suits resulting unfavorably, Mr. Barker was induced to repair to New Orleans, to superintend the others, and was admitted *ex gratia* by Judge Harper, of the United States district court, to take part with the counsel in the argument, his name not being in the record as a party, and he not being a member of the legal profession, could not otherwise have appeared in the case. The judge, being determined to defeat the claim, soon discovered from Mr. Barker’s advocacy that he would be held to a judicial course in no ways suited to his purpose.

The term closed without any final decision.

At the next term the judge withdrew the permission granted Mr. Barker to appear in the case, when that gentleman, determining not to be thus overthrown, commenced studying law, and pursued the study until he got admitted. At his first examination before the supreme court his acquirements were not found to be sufficient. He was thrown back on his books, and continued his reading until he felt himself to be qualified, when he presented himself again to the supreme court for another examination, which resulted favorably. This enabling him to appear before Judge Harper duly qualified as a counsellor at law, no further objection was made, and he conducted the business to a successful issue. Before this result, however, the judge was removed by death.

A judgment had been rendered in favor of the plaintiffs previous to Mr. Barker's visiting Louisiana by Judge Robertson, who was Judge Harper's predecessor, Judge Harper being clerk of the court at the time, whose duty it was to have the judgment signed three days after its rendition. Shortly after this Judge Robertson died, and Harper was appointed judge, when he refused to grant an execution, saying that the judgment had never been signed; that when he presented it to Judge Robertson for his signature he refused to sign it, saying it was a rascally claim, and that he never would sign the judgment. Judge Harper was then requested to sign it himself, as it was his duty to do. He refused. Application was made to the Supreme Court of the United States at Washington for a mandamus commanding him to sign it, which was granted, and Mr. B. went to New Orleans, armed with that document. On its presentation Judge Harper signed the judgment, and execution was issued. Soon after which he granted an injunction staying all proceedings, which, after a year or two, was dissolved without requiring proof, the allegation in the bill being insufficient.

After the death of Judge Harper, the original judgment, duly signed by Judge Robertson, was found in a trunk among Judge Harper's waste papers, it having been removed by him from the files of the court. This original judgment, thus signed, Mr. Barker brought before the State court, to which the debtor had applied for the benefit of the insolvent law. Here the district judge, holding court at Plaquemines,

held it to be necessary to prove the seal and signatures of the Life and Fire Insurance Company. It was too late to send a commission, and it was not known that there was a single person in Louisiana who could give the required testimony. This ruling of the judge was resisted, and while the associate counsel was arguing the point a boat from New Orleans, for Louisville, stopped to land passengers. Mr. Barker, hearing the steam blowing off, repaired to the levee, in the hope of obtaining a late newspaper. On approaching the boat, he recognized William Porter among the passengers. He knew that gentleman possessed the necessary information. An arrangement was made with the captain to delay his departure. Mr. Porter attended court, and gave the required testimony. He was the only man in Louisiana sufficiently informed to have given it. His arrival at the critical moment seemed to be as miraculous as the discovery of the judgment surreptitiously removed from the files of the court, which, when considered with the discovery of the original records of the midnight proceedings of the New York conspirators against the Tradesmen's Bank, and their attempts to make an innocent man answerable for their errors, seemed calculated to weaken a belief to which Mr. Barker has always adhered, viz: that there is not any divine interference with the affairs of men while on earth.

During the progress of these suits Mr. Barker gave some attention to sugar planting, imagining that it could be more successfully conducted with free than with slave labor. To test this, he sent a ship to Hamburg and brought out Germans, who were to work a certain number of years for the passages. The selection was unfortunate, his plantation was too near (forty-five miles) New Orleans, where the high rate of wages and other seductions of a city life soon induced these misguided persons to desert their post, so that in about one year not one remained to relate the failure of the experiment.

Mr. Barker abandoned the business, being satisfied that it was not adapted to his course of life, and that if the cultivation of sugar in Louisiana by free white labor ever became general, it could only be brought about on very small plantations, by farmers and their sons accustomed to labor taking an active part

therein, each employing a few additional hands. In that way, if the price of sugar afforded a remunerating profit, slave labor could be dispensed with, there not being anything in the climate or cultivation more unfavorable to the white than to the black population, both require to be acclimated.

This experiment failing, Mr. Barker having been taught to believe that the difference in the races was attributable more to their education and habits than to other causes, he took a family from a plantation for the purpose of testing this matter, and sent one of them, a promising boy, by the name of Adam Baker Smith, to Liverpool, per ship *Russia*, to John Fisher, esq., an eminent merchant, to be educated, the laws of Louisiana not allowing slaves to be educated in the State. This boy was returned to Mr. Barker, the schools in England refusing to admit persons of color as scholars. On his passages he acquired, by the kindness of the captain of the ship, Samuel Elliot, some knowledge of reading and writing. He became a good house servant, and then a porter in Mr. Barker's bank. At the age of twenty-one he was made free, and employed on wages in the bank, where he served faithfully for some years, and then went to California. There he found employment in a banking establishment, which enabled him to remit to Mr. Barker fifteen hundred dollars, with which his wife and child were purchased and sent to him, where they are all doing well.

Adam's sister he sent to New York, and made her free. She returned to New Orleans, where she now resides, without seeming to benefit by her freedom, although the most talented of the family.

Two other girls of the same family he sent to Massachusetts to be educated. The youngest is still there doing very well. The oldest was enticed away from Mr. Barker's friends at an early age, and he has no knowledge of what became of her.

Another boy of great promise, at the age of five years, Mr. Barker sent to Germany, and kept him there at school several years, brought him back to Philadelphia, where he behaved very well for a year or two. Having contracted a roving disposition, he left a very comfortable home, and enlisted in the naval service of the United States. Mr. Barker's son interposed,

and he was released on account of his youth. He, however, very soon again embarked in the sea service, and although several attempts have been made to put him in the way of doing better, they have all proved unavailing. In that service he has suffered very much, and writes home very sensible letters, from which it would be inferred that once back he would remain on shore; yet after a few months' land service, with very good prospects, he yields again to his ruling passion to buffet the waves.

Another boy he sent to New York, and placed him with a mechanic in Westchester county to learn his trade. This boy may turn out well, as he appears to have fine talents.

Another boy he took with him to the north, and put to school in Westchester county, New York, offering him his freedom if he would remain at the north. Very many persons interceded with him to do so; it was all in vain; he could not be induced to accept his freedom on such terms.

Although Mr. Barker has been greatly disappointed in the result of these experiments, he made one more effort by sending a female child, an orphan, whose mother died in his service, to Nantucket, where she was adopted by a very respectable colored family, and appears likely to be an exception to the general rule.

Many other of the Baker family remain in Louisiana, it appearing useless to attempt to improve their condition; and after more than twenty years' residence in a slave State, Mr. Barker has come to the conclusion that the master is a greater slave than the bondsman; that slavery operates prejudicially to the agricultural interests of the State; but it is an evil entailed by our ancestors which cannot be abolished with the means within the power of the State; that the slaveholders would consent to a general emancipation on receiving the value of their slaves from the treasury of the United States; yet they have no belief that their condition would be improved.

Mr. Barker knows that they are more comfortably provided for when in health, better taken care of when sick, and indulged in more rational amusements than are enjoyed by the laboring classes of any other country; have full religious liberty, and are allowed to intermarry according to their own fancy, and their

children are generally treated with the same kindness as those of their masters.

True, there are exceptions, and cruelties practised in all countries, quite as much so in free as in slave States. When a white man is detected in a crime he is punished in free States according to the nature of his offence; and Mr. Barker witnessed, when very young, the horrible scene of a white woman being tied to a cart in a public square, and there receiving on her naked back many lashes, which had been imposed by a court for a trifling theft. When slaves are detected in crime they are also punished, but the number of such punishments is not believed to be comparatively as great, or more severe than is inflicted on offenders in free States; yet it is a constant practice of those who are opposed to the institution of slavery to refer to these occurrences as evidence of general cruel treatment of slaves.

These people are greatly deceived, and most of them very honest in their zeal in favor of freedom, and, Mr. Barker is persuaded, would not meddle if they knew the unfavorable influence of their measures, causing much greater restrictions on the slaves than would be otherwise imposed.

That slavery is contrary to that great principle which teaches us to do unto others as we would they should do unto us, there can be no doubt, yet it is idle to waste our substance, our time, and our good feelings for each other on what is utterly impracticable. How far the slaves would make a valuable community, if made free, and placed in a colony by themselves, where their children could be educated and grow up free from the withering influence arising from the supposition that they were to be slaves for life, is problematical, but without such an education, Mr. Barker is satisfied they cannot be materially benefitted by the interposition of white men at a distance.

Many free persons of color being subject to great hardships from the police of New Orleans, Mr. Barker frequently interfered in their behalf, creating very considerable prejudice against him. His interference was constantly misrepresented by interested parties and in the newspapers. So great at one time was this feeling that he considered it expedient to make the following publication:

"TO THE PUBLIC.

"My opinions and conduct having been grossly misrepresented, I beg to be allowed to speak for myself. All my exertions have been and will continue to be confined to sending out of and keeping away from the State free men of color. This, when properly considered, will be approved by every slaveholder.

"On the 3d July instant, I wrote to a gentleman at Philadelphia, who had employed me to present to court the proof of the freedom of a man confined in prison, as follows:

"You should publish in the newspapers, and otherwise admonish all free people of color to keep away from this place, and especially if they have had their freedom established here they should keep away, as all such persons are notified to quit the State within sixty days, and if they remain or return again after the sixty days but for an hour, they are sent to the penitentiary for twelve months, and then ordered to quit in thirty days, and if they remain or return again after the thirty days they are sent to the penitentiary for life.

"There is no safety for free men of color not born here, or here before 1825, but to keep away from this place. This community is justly afraid of their contaminating influence on the slaves, and they cannot be permitted to mingle with each other; and while I shall at all times be willing to aid in securing to free men the exercise of their just right without regard to color, I advocate all constitutional and legal measures for keeping free people of color away from slave holding States. I think their friends in your quarter cannot do them a better service than to admonish them not to come here."

"My conduct has always corresponded with these opinions. I have not in the whole course of my life, to my recollection, written or said a word, in or out of court, at variance therefrom.

"When admitted to appear in the courts of Louisiana, the laws of the State as well as my duty imposed the obligation of fidelity to my clients, and it is strange that any one should complain of my having complied with the requisites of that obligation. It must have been misrepresentation that has led them to do so.

"My family have a deep interest in slave property, and no man is more tenacious of, or will go further to protect the rights of slaveholders than myself.

"If any man feels aggrieved, he has but to point out in what particular, and I will afford him all the satisfaction in my power, when he will discover that he had no just cause of complaint.

"Why pass laws protecting free men of color if it is to be considered wrong for counsel to appear in their behalf? No one will pretend that they are capable of maintaining in court their own rights. And if they were, they, at work in irons on the highway, could not get

their cases before the court with the proper proofs.

"It may be here proper for me to state, for the information of the public, some of the many facts which have come to my knowledge in relation to the treatment of free men of color in the prison of the second municipality. Having occasion to visit that prison, very many prisoners poured forth their complaints through the grates as I was passing through the road, declaring themselves free, that they were unlawfully detained and kept at work on the highway in chains. It would have been inhuman to have turned a deaf ear. Many of them appeared to be so white as for the law to presume them free. I immediately represented the case to his honor the recorder, who had six of them brought up, and pronounced five of them free from their complexion, without argument and without requiring any other testimony; and, on my enquiring why they had not been liberated the morning after their arrest, their degree being as visible then as at any other time, his honor replied that they had been placed in the chain gang by the officers of the prison without having been brought up before him for examination. Was it wrong to interfere in behalf of these men?

"Public justice as well as every principle of humanity requires that prisoners, however great their offence, should have free communication with their counsel.

"On two occasions I was denied all access to prisoners in the second municipality, in whose defence I had been requested to assist, on the plea that no such persons were confined. After many months' perseverance, by the aid of his honor, the recorder, I had an interview with one of them, and the only excuse offered for his concealment was that I had enquired for Charles Chandler, when his name was Charles C. Chandler; and by the aid of his honor, the mayor, with the other, after less delay, the excuse for his concealment was that I inquired for James Lloyd Warner when they had him on the prison books only by the name of Warner. Are such practices to be tolerated in this enlightened age? There was not any pretence that either of these men were slaves.

"On a recent occasion, I was informed that a colored man, born in my native State, Maine, of free parents, was in the chain gang at work on the highway—had been there since September last, although the driver of the gang knew him to be free, was born in the same town, went to school with him, and had known him from his childhood. I communicated these facts to his honor, the recorder, he had the matter promptly inquired into, and the man liberated, but without a penny's compensation for nine months' services improving the second municipality.

'At the prisons of the first and third municipality I have been treated with the greatest politeness, and every facility afforded by the

officers and keepers in bringing the law to the relief of the prisoners.

"Again, it was the practice unlawfully to retain prisoners in the second municipality for their board, doctor's bills, &c., after their freedom had been established, until I brought the matter before a higher court; and, on one occasion, without crediting on the account rendered the money taken from him when arrested. The public will please to observe that the rule in the second municipality was to allow prisoners three picayunes a day for such days as they labor on the public road, and to charge three picayunes a day for their board, in addition to the clothing supplied, the doctor's bills, &c. Hence, as they cannot labor on Sundays, holidays, or in stormy weather, they are brought in debt, as soon as confined, the amount of which is augmented weekly, and as these men seldom have money, and have no means of earning any during their confinement, their simple arrest without being charged with the slightest offence would amount to a decree of perpetual imprisonment, if no person from humane feelings had been allowed to interfere, and no counsel allowed to bring their case before the tribunals of the country.

"If the police officers of the second municipality expect to escape exposure by their attempts to light up the torch of suspicion against others, and to continue their unlawful and inhuman conduct towards their prisoners with impunity, they will be mistaken. The legislature is composed of slaveholders, who understand their rights and their interest too well to permit such abuses. They will enquire into the matter and make all obedient to the requirements of the law.

"JACOB BARKER."

On the failure of the bank which had built the St. Charles Hotel at New Orleans, Mr. Barker, being a large creditor, procured an act of the legislature to have the hotel sold to pay the debts of the bank; in this way he became the owner of nearly one-half the celebrated St. Charles Hotel, which was burned in 1851. From the materials of which it was built, and its position, three sides open to the street, where the engines could operate without obstruction, and a supply of water at hand, it was believed that a fire could not damage it more than one hundred thousand dollars, that amount only was insured. It has been rebuilt at a cost of more than \$400,000; consequently the actual loss was very great, from which the old stockholders in a great degree escaped, as they refused to undertake its rebuilding, in relation to which the following proceedings were had:

THE REBUILDING OF THE ST. CHARLES HOTEL.

A large meeting of citizens was held last evening, pursuant to a notice, at the Merchants' Exchange, to adopt measures for the prompt rebuilding of the St. Charles Hotel.

On motion of Mr. C. Fellowes, Mr. John M. Bell was appointed chairman, and W. S. Pickett secretary.

Mr. Bell, on taking the chair, delivered a neat and appropriate speech, returning his thanks for the compliment, and explaining briefly the object of the meeting. He remarked, in conclusion, that he thought the merchants and citizens could take no steps in the matter, with propriety, until the views of the present company could be ascertained. He saw that Mr. Egerton was present, and, presuming that he was acquainted with the wishes of the present board of directors, he hoped he would present them.

Mr. Egerton remarked that he did not feel authorized to speak the views and wishes of the company, but would give his own as one of the stockholders, and a member of the board of directors, elected that day. He said he had stated distinctly that he would not serve unless it was the intention of the company to rebuild the hotel without delay; and he believed that but one feeling existed among the members of the present company. He stated that the charter authorized the sale of twenty thousand shares of stock of twenty-five dollars each; that thirteen thousand five hundred had been sold, and the company found it unnecessary to sell the remaining six thousand five hundred shares. One thousand of the shares sold had been bought in for account of the company, leaving seven thousand five hundred shares unsold. He thought these might now be offered for sale, and that the proceeds, with the amount to be collected from the insurance offices, with the foundations already laid, and the old materials, would be nearly or quite sufficient to rebuild the hotel. He knew the pride which was felt in it by our citizens generally. It was the most beautiful edifice he had ever seen, and constituted the chief ornament of our city. Its celebrity was not confined to the south, nor even to this country, but extended to almost every part of the civilized world. He had no doubt, therefore, that our citizens would have it rebuilt, if they had to do it by subscriptions and voluntary contributions; that, however, would not be necessary.

Mr. Jacob Barker, having appeared and taken his seat in the meeting while Mr. Egerton was speaking, when he concluded, was called on for his views. He said he represented a majority of the stock of the present company, but he had not been authorized to speak for the stockholders he represented—he could only speak for himself.

He was one of the stockholders, and the secretary of the board of directors, and he was willing and anxious to resign and to sell out

his stock. He thought this would be the wish of all the stockholders, and that it would be best for them to do so, and to allow a new company to be formed, in which they would become new stockholders to a liberal amount. He thought the hotel might be rebuilt without going in debt. He was opposed to going in debt; pay-day would come bye-and-bye, and he had no opinion of getting into the hands of the sheriff. The company owed comparatively nothing. The books were all posted and balanced, to a cent. He thought that to require the new subscribers to pay \$25 per share for stock, while the value of that held by the present company is only \$12 50 to \$14 per share, appeared to be so unreasonable that he could not expect it to be agreed to. For one, as a new subscriber he would not agree to it, and he should blush to require such terms as one of the present stockholders.

Subscribers, said he, for the whole 20,000 shares, as per charter, at \$12 50 per share, would leave \$100,000 of the amount with the company, for the 8,000 shares reserved stock, in addition to the \$10,000 expected to be received from insurance companies. Thus, the company would have the land, the foundations, and the materials, liable only for \$94,000, payable in May, 1855, with seven per cent. interest, payable half-yearly.

By this arrangement, he said, the new directors will have \$100,000 in hand with which to commence the building. The other \$100,000 would not be wanted in less than four, six, and eight months, and the present stockholders would probably give a credit on a part of the purchase of their stock, and would also be likely to become new subscribers, on the same terms with their neighbors, to a reasonable amount; but he said he only spoke for those he represented—not as a director, but with a confident belief that all would agree to those terms. Very little money would be required on making the subscriptions.

At the close of Mr. Barker's remarks, which were received with much applause,

Mr. F. A. Lumsden rose and offered the following resolutions:

Resolved, That a committee of seven disinterested persons be appointed by the chairman of this meeting, to ascertain what arrangements can be made with the present stockholders of the St. Charles Hotel Company, relative to disposing of their shares in the stock of said company, and further to ascertain their views relative to disposing of their charter, site, foundations, materials, etc., and that said committee report to an adjourned meeting.

Resolved further, That said committee be instructed to inquire and report what means are necessary to reconstruct the St. Charles Hotel.

On motion of Mr. Wm. Henderson, the blank was filled with Wednesday evening, at six o'clock. The resolution was then adopted.

The chair then appointed the following gentlemen to be of the committee:

F. A. Lumsden, H. S. Buckner, W. B. Partee, J. G. Gaines, W. E. Sewell, J. R. Marshall, W. W. Montgomery.

Mr. Lumsden requested to be excused, and James J. Day was appointed in his place. On motion, the chairman was added to the committee, and the meeting adjourned to meet on Wednesday evening next, at six o'clock.

This plan was adopted, and the hotel rebuilt more commodious and as magnificent as ever, with the exception of the cupola, which, some day or other, the public hope to see added. Mr. Barker retained very little interest in it, consequently took no part in the rebuilding.

His banking operations have been greatly restricted by the passage of a law inhibiting individuals from issuing bank notes, and by the deranged state of financial affairs throughout the nation; this restriction Mr. Barker approves, although he believes its operation on those embarked in the business should have been deferred, giving them reasonable time to wind up their affairs without sacrifice, and especially until the expiration of the year for which the State and city had granted licenses and received the heavy tax imposed on the business for the full year; in place of which the law went into immediate operation, and Mr. Barker's bank notes all promptly redeemed with specie.

UNITED STATES BRANCH MINT AT NEW ORLEANS.

Soon after Mr. Barker was admitted to the bar, he was applied to by Mr. Rufus Tyler, coiner of the United States Branch Mint at New Orleans, and Mr. James Maxwell, melter and refiner—two gentlemen of sterling integrity, with scientific attainments of the first order—to defend them against complaints made by the Superintendent of the Branch Mint to the Secretary of the Treasury of the United States against them. Mr. Barker, being convinced that there were great irregularities practised at the Branch Mint, and that the culpable parties were endeavoring to make these two unoffending men answerable for the sins of others, embarked in their cause. Proper representation was made to the government, with a request for investigation. It was ordered. Thomas Slidell, esq., the United States district attorney, was appointed to hear

testimony and report thereon. The Secretary of the Treasury offered to employ Mr. Barker to assist in the investigation; he declined the service lest it might interfere with his duty to his clients, although their pecuniary means would not enable them to compensate for the services their case required. The investigation was held at the mint daily for about forty days in the hottest part of the season, meeting at four o'clock, p. m., and continuing often until after midnight. Mr. Barker embarked with his accustomed zeal, and followed all the witnesses through these various transactions, which brought to light irregularities and transactions of a very exceptionable character. No one circumstance occurred in any way to impugn the conduct of either Messrs. Tyler or Maxwell. The judge's advocate in the case, if we may so style the district attorney, was thoroughly convinced of their freedom from offence, and that those who complained of them were unfit for the stations they occupied. The evidence and the arguments of counsel were transmitted to government, Messrs. Tyler and Maxwell sustained, and the others released from the employment. Unfortunately, both of Mr. Barker's clients, with many other employees at the mint, became the victims of the yellow fever before the result was known, their anxiety about which greatly contributed to the fatal effect of the fever. Mr. Barker found his reward for the services rendered in the successful issue of the combat, establishing the character of Messrs. Tyler and Maxwell to be without spot or blemish.

YELLOW FEVER.

Mr. Barker having occasion to attend court in a neighboring parish, in August, 1837, when the yellow fever was raging in New Orleans, he, not being acclimated, asked his physician, Dr. Kerr, for a prescription to take with him to be used in case of sickness; the Dr. prepared the medicine with instructions under no circumstances to have a vein opened; that as soon as the approach of the enemy was perceptible, usually indicated by a chill, to resort to cupping of the head and ankle, baths of warm water strongly impregnated with cayenne pepper and mustard, drinking warm lemonade, and as soon as the skin became a little softened to take the medicine. Should there be much pain in the head or back, which is usual, ap-

ply ice constantly; refrain from all food save ice, and eat as much of that as your inclination dictates. If the fever continue or return, take twenty grains of calomel the following day, in either case in a day or two a large dose of castor oil. Mr. Barker was taken at Plaquemine, in the office of the clerk of the court. He immediately repaired to the hotel, pursued the course recommended by Dr. Kerr, sending for Dr. Cummings, a highly respectable physician of that place, to visit him with his cupping apparatus. He came, said he had no such apparatus, and proposed to open a vein, which Mr. Barker declined, upon which the following took place:

"Sir," said the doctor, "you are a very sick man, and ought to have some medicine immediately."

"I know that, but not until I have been cupped."

"Then, for what have you sent for me?"

"To cup me."

"You might as well have sent for a barber."

"Provided he could cup me as well."

Cupping apparatus not being found in Plaquemine, an express was sent to Baton Rouge. Dr. Ogden came provided, the operation was performed, when the doctor remarked:

"You are a very sick man, and ought to take some medicine immediately." "I intend to do so," replied Mr. Barker, "for which purpose I have it in my pocket." "I suppose," said the doctor, "you have no objection to let me see it," and who, having seen it, said, "I do not think it will do you any harm, although I should not give you half the quantity." Mr. Barker took it, believing it to be fifty grains of calomel, when the doctor remarked, "you seem to love it." "Oh no," said Mr. Barker, "I do it mechanically because it was to be done." The prescriptions answered the purpose intended, and Mr. Barker was well again in ten days, and recommends to persons attacked by the yellow fever, whether they adopt Dr. Kerr's advice or not, that they apply to the stomach early, and at all stages of the disease, very large poultices of green okra well boiled, which, if not to be had, flaxseed as a substitute.

Modern practice favors more moderate prescriptions, that is, castor oil in lieu of calomel for persons of slender constitutions. Con-

valescent patients should refrain from indulging their returning appetites as long as possible, and not leave their beds or attempt the least exertion until fully recovered, lest relapse should be brought on, which is frequently the case, and much more dangerous than the first attack. Many persons have fallen victims to this acclimating fever from omitting the proper remedies until it got too deeply seated, imagining that the headache or chill they felt arose from a slight cold, which would pass away by another day, in place of which it became seated beyond medical aid. This should admonish all to make battle on the first approach of the enemy.

TEXAS.

The nation was very much agitated and divided in opinion on the subject of the annexation of Texas. That republic was struggling with difficulties that seemed insurmountable without foreign aid. Money was what she wanted. Ten millions of dollars would have relieved her from all embarrassments; leaving a sufficient surplus to have established her nationality on a firm basis. She sent ministers to Europe and offered the most liberal terms for money. France, England, and, probably, other nations refused. It is difficult to understand this short-sighted policy. They could have made the loan three-fourths in Texas notes; purchased such notes at an average of twenty-five cents on the dollar. They were selling in the United States, in large amounts, at from three to five cents on the dollar, consequently a loan of ten millions would not have subjected them to an advance of over half that sum in specie. Great Britain was particularly interested in the question; and by making the loan she would have prevented annexation, secured the independence of Texas, and a commercial treaty giving her great advantages with a country capable of receiving all her surplus population, and after the lapse of some years furnishing cotton sufficient for all her purposes, relieving her from dependence on the United States for the article so necessary to her existence.

Had these advantages been acquired they would have been without the slaughter of her subjects or the burning of gunpowder, consequently wanting in that glory which has been in too many cases the governing principle.

A public meeting was called at the Arcade

to express the New Orleans sentiment in relation to annexation. Mr. Barker attended, by special invitation, and made the following remarks:

Mr. Barker said: "Texas must be ours—'peaceably if we can, forcibly if we must'—pointing out the advantages which would accrue to the northern manufacturers and ship-owners from annexation. Yet they are opposed," he said, "as they were to Jefferson's embargo and Madison's war in vindication of free trade and sailors' rights. The fanaticism of these men on the subject of slavery, and their inordinate thirst for political power, triumphed at that time, as it does now, over their known appetite for gold, as is too plainly indicated by the different sentiments put forth now and previous to the dictum of their chief. The enduring patience with which Calhoun and the whole south sustained the measures he had alluded to, while their crops were rotting on their plantations, in their granaries, gin-houses, and purgeries, won his whole heart, and he was most happy to find that the same feelings pervade bosoms of their descendants, although they have nothing to gain but the protection of our frontier and the preservation of our institutions, while the eastern manufacturers are to enjoy a monopoly of the whole consumption of Texas, and her ship owners the carrying trade. The south have no ships, and especially Louisiana has none. The proud Kentuckian, in our infancy, hurled defiance at Great Britain, and nobly supported the battle until it was crowned with victory; and shall we now, with our increased population, resources, and prowess, quail before Mexico, backed by the lion of England? Some of my hearers," said Mr. B., "being much younger than I am, may console themselves with the belief that they can acquire Texas by the sword at pleasure—delay does not suit the temperament of my mind nor my age. I wish to see the nail clenched before it is too late for me to share in the fun or the fight. I have not a word to say to the prejudice of Mr. Clay, or of any other man, but to urge on this meeting the necessity of filling all the departments, Congress, the legislature, and the convention with the friends of immediate annexation. Annexation is to be brought about by the power of public opinion; and how is public

opinion to be known if not manifested by the ballot boxes? I do not come here the advocate of men, but of measures. I speak to whigs and to democrats the same language. I say to you all, *do not vote for any man, for any subordinate situation, who is not known to be in favor of immediate annexation.*

"If Mr. Clay should be elected President he will be controlled by public opinion as much as Mr. Polk, and I am persuaded that he will be found as willing to yield to it. At all events, the President, whoever he may be, is but the servant of the people, and he must be controlled by their opinion.

"Let the assent of Mexico be obtained, as also that of all the world, if possible; but to make the consent of any nation on earth other than Texas necessary, would, after having acknowledged her independence, be highly dishonorable."

Mr. Barker adverted to the increased duty in England on sugar from slaveholding States over that from free States, and said: "Britain's course was onward—she never receded; she was not a nation to retrace her steps. The next thing would be a discriminating duty of 3d. sterling per pound on cotton, as a reward to Texas for inhibiting slavery, in case we reject her overtures for annexation." Where, then, will be the value of our cotton plantations? She attempted this by encouraging the culture of cotton in India; but the soil, the climate, the want of operatives possessing that information which was necessary for success, and especially the length of the voyage and consequent high rate of freight, defeated, for a season, her humane intentions on her too successful rival. The Territory of Texas borders on Red river, which empties itself into the ocean through the Mississippi. Her fleets, therefore, have, according to the laws of nations, equal rights with ourselves to navigate both rivers; and if we refuse annexation her necessities may induce her to throw herself into the kind embraces of Britain; and how would you like to see British fleets navigating these rivers with equal authority with our own? Let this take place and where would we quickly find ourselves?"

Mr. Barker dwelt on other subjects to the great satisfaction of the meeting, and closed by commending the ability, ardor, and patriot-

ism of Mr. Calhoun in supporting the war of 1812, and of his continuing willing again to encounter the same lion which he had then helped to vanquish; and said that his voice in 1848, if he lived so long, should be for Calhoun for the next President, even if he should find himself the only advocate left.

The enthusiasm manifested by the meeting at the mention of Mr. Calhoun as the Presidential candidate for the next canvass made the welkin ring.

GENERAL TAYLOR.

Texas was annexed; taking possession occasioned the war with Mexico, the effect of which was a vast expenditure of money and the depreciation of the market price of the government securities, causing a great derangement in the finances and commerce of the nation, which enabled the opponents of the war to mislead the public, and obtain a majority in the House of Representatives who were not likely to continue the war to a successful termination. Therefore, numerous democrats throughout the nation, believing their numbers sufficiently large with the aid of either of the great political parties to control the selection of President, nominated General Taylor, in the hope that both parties would unite therein in preference to defeat, which seemed to await the party who might oppose the election of an independent candidate. General Taylor was then successfully conducting the war as commanding general, who had publicly announced that he would not be the candidate of any party, and was believed not to have ever voted or taken part in politics.

A convention of the advocates of this measure residing in Louisiana was resolved upon. Mr. Barker was appointed one of the delegates; the meeting was of very short duration, and conducted in a very unsatisfactory manner to the friends with whom it originated, each party in the convention wishing to give it such a character as would be likely to influence the coming administration in their favor. No opportunity having been presented at the meeting for a calm explanation, Mr. Barker, immediately upon its adjournment, caused to be published in the New Orleans Commercial Times the views he intended to have expressed in the convention, which were as follows:

"MR. PRESIDENT: The spirit of the preamble and resolutions adopted are very good so far as they go, but they seem to evade the great question at issue—*'the vigorous prosecution of the war until an honorable peace can be obtained.'*"

"We, however, were not sent here to nominate a candidate for the presidency. The people have done that for themselves. We were sent here to further such nomination. The momentous question, whether they be allowed to decide for themselves or be subject to certain cliques and managers, is now to be tried; Wall street hoots at the idea to sever the shackles of party. It has the money, and we have the physical force. We shall see who will prevail in this contest. Our opponents are not suited to the emergency of the times. What sort of battle do you suppose they would have made had they composed the army at the battle of Palo Alto or Buena Vista? They may be very good auctioneers, but we will let them know we are not to be knocked off for gold like so many chests of tea. Jefferson said that large cities were sores on the body politic. Some of our friends indulge the idea that General Taylor will be nominated by the Baltimore or Philadelphia convention. I hope both conventions will nominate him, and thus end all political controversy. Yet it would be preposterous for the friends of General Taylor to take part in sending delegates to either convention. If they did they would be compromised, and bound to support such candidates as should be nominated, whether they be Taylor, Clay, Cass, Calhoun, or Van Buren. Now, as we mean, under all circumstances, to support the election of General Taylor, we cannot take part in any new nomination. The work has been done by the people, and, being well done, we will not allow it to be disturbed.

"The best man in the nation has been put forth as the candidate. With such a chief, we shall be excused for being a little clannish, and for indulging in a little State pride. Look at Virginia, in regard to Washington, Jefferson, and Madison; South Carolina, in regard to Mr. Calhoun; Kentucky, in regard to Mr. Clay; New York, in regard to Messrs. Tompkins, Clinton, and Van Buren; and Massachusetts, in regard to Mr. Webster; and will not Louisiana exhibit on this occasion as much zeal and fidelity to the man whom all admit to be the noblest work of God, 'honest,' intelligent, and brave—the man whom we are all proud to call a citizen of Louisiana. Why hesitate on this war question?"

"Our opponents have boldly put forth opposition to the war, and mean to fight the battle on that ground. They have thrown down the glove; let us pick it up, and as boldly bid them to arms on that point. We cannot succeed on any other. An open, fearless, decisive course, is the only one that will find favor with the American people. Any one who looks for

success on any other ground will find himself disappointed. What carried us through the revolution but the Declaration of Independence? Did we not put an end to the impressment of our seamen by boldly declaring war, and sustaining that war by hard fighting? And what settled our account with France but General Jackson's saying to the king that if he did not pay, 'we will pay ourselves from your ships found on the ocean.'

"I consider General Taylor the best man to conduct the war, if an honorable peace cannot be obtained; and the most likely to obtain an honorable peace, if the thing be possible. With these opinions I come to this convention, and, I presume, every member came with the same view. We claim to represent the peace party, always preferring peace, but ever ready for war. Those most anxious for a speedy and honorable peace believe it can be obtained by hard fighting, and not otherwise, and that all other questions are of minor importance, and should be deferred until the war is over. We are not to be diverted by questions of tariff or free trade, bank or currency, sub-treasury, public lands, internal improvements, or the exercise of the veto power.

"Our opponents, for the purpose of embarrassing the operations of the war, discuss all the great points of political economy. They put forth the opinions of their great leader, Mr. Clay, and demand his support, because he has often been before the people for the same office—a reason totally insufficient. It presupposes that we incur an obligation by voting for an individual to do the like again, when, if there be any obligation, it must be on the part of the candidate. The idea of any individual pretending a claim is revolting, and of itself furnishes a good reason for leaving him at home, in the enjoyment of quiet retirement, the moment a claim is preferred. Further, the principle of rotation in office renders it inexpedient for any individual to monopolize all the honors of his country.

"Mr. Clay is undoubtedly a great man, and is entitled to much credit for the pertinacity with which he seems to cling to the long-cherished hope of inhabiting the White House—this matter of hope, together with that of sleep, are the kindest institutions of Heaven.

"The ground on which Mr. Clay, in his Lexington speech, has invited us to contest the presidential canvass, is not suited to the meridian of the south and of the west, and his friends in this quarter lament that he should have found it necessary to rely on the fanatics of the north, the church-burners—called natives, the abolitionists, and the defenders of the Hartford convention. With them the south can never confederate. I do not perceive any difference between the opposers of the revolutionary war, the war of 1812, and the present war. It is enough that our country is at war, to enlist the support of every patriot. I bid

all the opposers of the war to beware, or they will have handed down to posterity the same indignant feelings towards them and their memory that were felt by our fathers towards the Tories of the revolution, and as the present generation feel towards the advocates of the Hartford convention. Had Mr. Clay come out for a vigorous prosecution of the war, the entire south and west would have gone for him. They would have disregarded all other questions—the pursuit of that phantom, free trade without reciprocity—the tariff—the currency—the independent treasury and pet-bank system, would all have dwindled into insignificance, and past opinions have been forgotten—all confiding in his having sufficient wisdom to adopt his opinions to the state of things as they exist when called on to act; although it will be admitted that it is rather difficult to induce old men to abandon pre-conceived opinions.

"In this we have a remarkable instance in the venerable Albert Gallatin—a purer man than whom never lived—although nearly ninety years of age, he has as clear an intellect and holds as vigorous a pen as when the snows of but half as many winters whitened his brow. I have known him nearly fifty years, the same cool, calculating head, the friend of Jefferson, and the pride of the democratic party, to whom and to whose opinions every consideration is due, quite as much so, as if he had been born in any of the old thirteen States. Let light come from whatever quarter it may, our windows should not be closed, the light is not to be shut out; and I sincerely hope that there has been some mistake in the publication of the remarks made in the Senate of the United States by the Hon. Solomon W. Downs, of Louisiana. If there has not been an error, the friends of Solomon will question his wisdom. He should have remembered, that but for the votes of adopted citizens he would not occupy the seat with which he is now honored, and that if such should be supposed to be the opinions entertained by the democratic party, the days of their ascendancy would be numbered. However, I undertake to say, that there is not a single democrat in Louisiana, and very few in the United States, who are not ready to rebel against the doctrine said to have been put forth by Senator Downs. The immortal Washington did not think foreign birth any reason for turning a deaf ear to the counsel of Hamilton, Lafayette, Montgomery, or Kosciuszko; nor did Louisiana, when she elevated Judge Porter, Soule, Benjamin, and Peters, to places of great distinction, inquire the places of their birth. Those styling themselves Native Americans have lighted up a flame of indignation in the bosom of every adopted citizen in the United States which cannot be extinguished during the present generation.

"Mr. Gallatin knows, as well as any man in

the world, the necessity to economize our national resources, and to protect the public funds from the inordinate appetite of the surrounding multitude. He had the same praiseworthy feeling during the last war, and knew full well that money was the sinew of war; and that if that failed, dismay and disgrace would soon follow. He is, however, mistaken in putting down as lost the time of the men, and the supplies they draw from their own country; he might as well denominate our home-market a loss to the nation of all we consume. So long as our own agricultural products are more than sufficient to supply our wants, diverting a portion of the labor to other objects is not injurious. It probably has not occurred to him that a crop of 1,500,000 bales of cotton will yield to the planter more money than a crop of 3,000,000; and nearly the same ratio with most other articles. Mr. Gallatin does not seem to have recollected that our population and resources have nearly tripled since he was at the head of the treasury. The power of resuscitation of the American people is great, beyond the most sanguine calculations of the best informed among us; and I would say to him, as well as to Messrs. Clay, Calhoun, and Webster, that they have lived to see a people grow up and come forward, who, when called on to resent an indignity offered to some member of their family, will fly to battle, and expose their lives, without stopping to count the cost of the pistols necessary for the mortal strife. Whigs and democrats have alike shared in the effects of the present war; they flew to arms at their country's first call, and are in like manner covered with glory by deeds of valor; and now, when their ranks are thinned by disease and death—by the slaughter incident to hard-fought battles—is there a man with a real American heart, who will leave his father, his child, his brother, his relation, or his friend, to perish in a foreign country by the knife or the lasso, for the want of timely and adequate reinforcements and supplies to preserve the trophies already won. and to command an honorable peace, by dispelling the delusion infused into the Mexicans, that money cannot be obtained to continue the war?

"We cannot recognize any distinction between whigs and democrats, any more than we can between the native born citizen and adopted citizen. Gen. Taylor has been an eye witness of the cool, persevering bravery of the German, of the impetuosity and determined courage of the Irish. They, alike, with all other citizens of this republic, have marched up to the cannon's mouth and met death as men never before encountered the grim monster; and if Gen. Taylor should be elected, he will spurn from his presence and his confidence the man who should dare to say this, that, or the other applicant for executive favor is whig, democrat, or a foreigner by birth. He will not, my word for it, permit any such invidious

distinctions to be made. Knowing this, the Germans, the Irish, and every other patriot, will vie with each other in the strife of who shall do most to further the election of Gen. Taylor. They will march up to the ballot-box with the same ardor, the same enthusiasm, as their countrymen cut their way through the enemy's ranks at Palo Alto and Monterey. They will not forget that their victorious chief was, notwithstanding these splendid achievements, not allowed to command a division of the army under Scott; in place of which, he was shorn of the flower of his troops, and recommended to retire within the walls of Monterey, and there to defend himself. This he declined, preferring the open field, and to encounter with his volunteers four times their number. There he met them commanded by Santa Anna in person; and with his sword, at the battle of Buena Vista, carved out an answer to all those who doubted his superiority—a battle which has not any equal on the page of history. It surpasses those of Bonaparte and Wellington; and if such deeds of daring valor had been achieved under a monarchical form of government, dukedoms, principalities, and the imperial diadem, would have been the reward, in place of which we have only our affections, our confidence, and our respect to confer. And is there an American who will withhold these from Gen. Taylor?"

The following remarks of a friend at the period in question will be read with interest by politicians:

"When we consider the immediate causes which led to the election of General Zachary Taylor, and the prominent part taken therein by Mr. Barker, we cannot resist the conclusion that that gentleman, together with those of his old political associates and friends who acted with him, must have been sadly disappointed, and that they regret the course which has been pursued by the present administration.

"They, however, say that if they had known what would have been the result, yes, more, if they had known that the first fruits of the election of General Taylor would have been the removal of every democratic officeholder and the appointment of the rankest whigs to the places thus made vacant, they still would have supported his election; because those now in power hold office but for four years, when the democracy of the land will be sure to re-establish their ascendancy, and when a clean sweep will be made; because, if General Cass had been elected, the many drones who were in office would not have been removed; because, when they embarked for the election of General Taylor, the opposition, by deceiving the people, were gaining an ascendancy that threatened to prolong the war, by withholding supplies, and thus force our gallant army to retreat and ingloriously withdraw from Mexico; because the opposition had obtained a majority in the

House of Representatives of the United States, and their leaders had advised the withholding the requisite supplies for the prosecution of the war until the administration should explain and define their object in its further prosecution.

"Under these circumstances the independent men of both parties deemed it to be of the first importance to break down an opposition so unholty, and knew that it could be done by constraining the whigs to support General Taylor for the presidency, (he having done more to promote the success of the war than any other citizen,) and they did it effectually.

"When the Philadelphia convention, acting under such constraint, nominated General Taylor, because they considered him the most available, seven-eighths of the whig party preferred Mr. Clay; yet a sufficient number of them swallowed the pill, bitter as it was, in order to ensure, with the co-operation of the independent party, the election of General Taylor, who, notwithstanding the aid of his independent friends, came out of the urn a minority President, so far as the popular vote was concerned.

"He was elected by only five majority, by electors chosen by the people; and as Louisiana gave six votes, she, a democratic State, may be considered to have decided the question, and the first act of General Taylor was to exclude her citizens, as well as those of New York, from a seat in his cabinet, urging that as the President and Vice President came from those States they had a full proportion and influence in the administration—a most unwise, injudicious, and unjust proscription.

"The public were entitled to the services of the best men, without reference to the place of their residence; and, independent of this, the citizens of Louisiana, and of New York, ought not to have been thus proscribed, and the selections for minor offices should have been made according to General Taylor's often reiterated principles, irrespective of party distinctions.

"Had this been done, an administration favorable to impartial appointments would have been continued for many terms, whether General Taylor wished to be re-elected or not. It is to be presumed that, at his time of life, he will prefer retirement to the perplexities and responsibilities of an office which cannot add renown to the glory which already surrounds him.

"His election has had the happy effect of giving character to his military exploits, which have immortalized him as the greatest captain of the age, and this is worth to the nation more than all the offices within the gift of any administration—a re-election cannot add anything to such glory. And if it were otherwise, the great body of the independent party are committed to the one-term principle, Mr. Barker in particular, he having presided at a democratic meeting, held in New York, at which

resolutions to that effect were unanimously passed.

"As to who fills the various offices the people at large have not any other interest therein than that the men selected should be the best and the most competent to perform the duties required. Had that rule been observed, and the men taken from the masses irrespective of political parties, the supposed opinions of General Taylor would have been fulfilled; and even if nine-tenths of the men appointed to office had been whigs, the administration would have been popular had they made ten times as many removals as they have done. As it is, the administration cannot maintain their rule, and it is not to be supposed that any sensible man will doubt the power of the united democratic party to regain their wonted ascendancy.

"The New York Herald, of the 7th August, 1849, put forth some very judicious remarks on the course of the administration. This paper may be considered to have given to General Taylor's election more efficient support than any other journal in the United States. It was, in fact, the most serviceable in its truly independent course, heralding the victories and the merits of the hero of Buena Vista, and in a thousand ways leading public opinion to the belief that he would be elected; for on that belief depended his election, as a vast proportion of the floating population are greatly pleased with all opportunities of throwing up their caps and shouting victory! victory! and if you once make the electors believe that any particular candidate will be elected, he is sure to succeed."

General Taylor was nominated by the whig convention at Philadelphia; General Cass was nominated, about the same time, by the democratic convention at Baltimore. Messrs. Clay and Van Buren, having unfortunately come out in the public papers against the annexation of Texas, were set aside by their respective parties; immediately after which, Mr. Barker, having embarked in this cause, united with other independent democrats in calling a meeting, to be held on the 24th of June, 1847, of those favorable to the election of General Taylor, and prepared the following resolutions, with the intention of offering them for the consideration of the meeting. They were not presented, on account of the tumultuous character of the meeting. Persons from both of the old political parties attended, determined that no business should be done; the one wished to prevent democrats from voting for General Taylor—the other wishing to make him wear the livery of the whig party.

RESOLUTIONS.

Resolved, That this meeting concur in the sentiments expressed in the proceedings of a meeting of the friends of the election of General Taylor, held at Philadelphia on the 6th of October instant.

Resolved, That it is the duty of every branch of the government to enforce and practice the most rigid economy in conducting our public affairs, and that no more revenue ought to be raised than is required to defray the necessary expenses of the government, and for the gradual but certain extinction of the debt created by the prosecution of a just and necessary war—peaceful relations having been restored.

Resolved, That the separation of the moneys of the government from local banks is indispensable for the safety of the funds of the government and the rights of the people.

Resolved, That the liberal principles embodied by Jefferson in the Declaration of Independence, and sanctioned in the Constitution, which makes ours the land of liberty and the asylum of the oppressed of every nation, are cardinal principles of our faith; and every attempt to abridge the present privilege of becoming citizens and owners of soil among us ought to be resisted with the same spirit which swept the alien and seditious laws from our statute books.

Resolved, That the proceeds of the public lands ought to be sacredly applied to the national objects specified in the Constitution, and that we are opposed to any law for the distribution of such proceeds among the States as alike inexpedient in policy and repugnant to the Constitution.

Resolved, That the war with Mexico, provoked on her part by years of insult and injury, was commenced by her army crossing the Rio Grande, attacking the American troops, and invading our sister State of Texas; and that, upon all the principles of patriotism and the laws of nations, it was a just and necessary war on our part, in which every American citizen should have shown himself on the side of his country, and neither morally nor physically, by word or deed, have given "aid and comfort to the enemy."

Resolved, That the officers and soldiers, native and adopted, who have carried the arms of their country into Mexico, have crowned it with imperishable glory. Their unconquerable courage, their daring enterprise, their unfaltering perseverance and fortitude when assailed on all sides by innumerable foes, and that more formidable enemy, the diseases of the climate, exalt their devoted patriotism into the highest heroism, and give them a right to the profound gratitude of their country; in relation to whom both General Scott and General Taylor bear the same testimony; the former expressed himself, at a public meeting on his arrival at New York, thus:

"A very large portion of the rank and file of that army, regulars and volunteers, went forth from the city of New York to conquer or die. It was my lot to observe their irresistible valor and prowess; all dangers, difficulties, and hardships, were met and conquered. The Irish and the Germans, the Swiss and the French, the Briton, and other adopted citizens, fought in the same ranks, under the same colors, side by side with the native-born Americans, exhibiting like courage and efficiency, and uniting, at every victory, in the same enthusiastic shouts in honor of our flag and country.

"From Vera Cruz into the capital of Mexico there was generous rivalry in heroic daring and brilliant achievements. Let those who saw that career of valor and patriotism say, if they can, what race, according to numbers, contributed most to the general success and glory of the campaign.

"On the many hard-fought fields there was no room for invidious distinction. All proved themselves the faithful sons of one beloved country; and no spectator could fail to dismiss any lingering prejudice he might have entertained as to the comparative merits of Americans by birth and Americans by choice and adoption."

Resolved, That General Zachary Taylor rendered the most essential aid in consummating the annexation of Texas; and that his military exploits, cool determined courage and perseverance at Palo Alto, Resaca de la Palma, Monterey, and Buena Vista, electrified the world, and filled every American heart with joy, and, with the other victories won by our brave soldiers and gallant officers, led to the honorable peace that has been concluded.

Resolved, That the persons composing this meeting fully concur in the nomination made by the people of the United States, of General Zachary Taylor for the presidency, since which nothing has transpired to change their opinion that his refusal to wear the livery of either political party exalts him in our estimation; and while this meeting rejoices that the whig convention have united in his nomination, they deeply regret that the democratic convention did not also concur therein.

Subsequently he addressed the citizens of the nation through the New York Herald, as follows:

JACOB BARKER ON GENERAL TAYLOR'S ELECTION.

"NEW YORK, Sept. 5, 1848.

"James Gordon Bennett, esq.,

"DEAR SIR: You ask what will be the course of the original southern friends of Gen. Taylor in relation to the election of Mr. Fillmore? I answer that they will support him with the same fidelity they do the hero of Buena Vista. They nominated General Taylor from an earnest desire for peace with Mexico, and from a conviction that a vigorous prosecu-

tion of the war was the best, in fact the only way to procure an honorable peace. To promote that object, together with a wholesome restraint on the exercise of the veto power, and a reformation in the administration of the finances of the nation, they wished to see General Taylor elected, and they fondly hoped, from his peculiar fitness for the station, that the Baltimore as well as the Philadelphia convention would have concurred in his nomination. The Baltimore convention preferred another; we, therefore, owe them nothing. The Philadelphia convention confirmed our nomination, superadding that of Mr. Fillmore for the vice presidency. This was a fair compromise; it, therefore, behooves us to support Mr. Fillmore with the same fidelity we expect his friends to support General Taylor, and we shall faithfully perform such duty, without stopping to inquire how far others may act with the same good faith. All should remember that every institution of society, and particularly the Constitution of the United States, is the result of compromise. General Taylor stands before the public committed to leave all matters of national policy to the decision of the people's immediate representatives. No man acquainted with the general will doubt as to his carrying out that opinion to the letter. He is honest, prompt, intelligent, and highly qualified to discharge the duties of the presidency. Not so familiar with diplomacy as Mr. Clay or Mr. Webster—and those gentlemen may vainly imagine these qualifications essential for a candidate for the presidency—the people believe that other qualifications possessed by General Taylor, and not by these other gentlemen, are quite as important.

“General Washington and General Jackson were both of the army, and they administered the executive department quite as well as Mr. Tyler or Mr. Polk, who were not of the army. The original friends of General Taylor considered his past life a sufficient pledge for the future, and so far from wishing him to wear their livery, or pledge himself to any course, they believe it to be far more important to him to adhere to the independent position he originally assumed, than to be elected President of the United States. Should he be elected, the people will have a President free to act according to his best judgment, uninfluenced by party pledges or a kitchen cabinet.

“It is admitted at the south, as well as at the north, that slavery and wars are great curses. In this sentiment General Taylor participates; yet, sooner or later, we must have a war to exterminate British rule from this continent, and will any one pretend that General Taylor would not be the best President for the performance of such a holy work? His friends do not approve of any attempt to detract from the merit of his opponents. They think favorably of their candidates, and that either General Cass or Mr. Van Buren would make a good

President if elected. They consider General Taylor preferable, and most likely to administer the government in accordance with the wishes of the whole people. Yet, if either of the other two should be elected, the nation would have occasion to be proud of their President. As to slavery, as it now exists, they all three, as far as I have been enabled to discover, hold the same opinions; therefore, no preference on that score; and, as to its extension, I cannot believe that any sensible man wishes to see it extended. It would be a lasting disgrace to this republic to authorize slavery in countries where it does not now exist. In saying this, I speak only for myself; yet it is my opinion that such would be the general opinion in Louisiana, if the subject should there be discussed and considered. The citizens of that State are, like most other people, attached to their own interest. They do not raise slaves for sale; they do not emigrate to new countries for agricultural pursuits; their soil is as good as can be wished. With more lands than the owners can supply with hands for a century to come, they are purchasers rather than sellers of slaves; hence, it is not for their interest to extend the market and thereby augment the price of slaves. I believe, further, that the whole south would gladly agree that all the slaves should be paid for from the United States treasury, made free, and sent to the newly acquired territory, and there formed into a separate nation, to be governed by themselves. A great portion of such territory I consider worthless to this nation for any other purpose; or if New and Old England wish otherwise to emancipate them, they have only to send back their ships which brought them south with the money for which they sold these unfortunate men into slavery, and the present holders will gladly exchange them back. Britain forced them on her colonies, which Virginia resisted to the utmost of her power, and those who sent them into slavery cannot, with any grace, ask their emancipation from those to whom they sold them, without returning the money.

“I have resided among those people for the last fourteen years, during all which time I have defended the free colored inhabitants to the best of my ability, without accepting any fees for my services, and have expended every dollar I could afford in experiments to prove to the slaveholders that it would be for their interest to employ free laborers in preference to slaves, and otherwise in the cause of freedom. I consider the slaves of Louisiana better fed, clothed, cared for when sick, and happier than the working classes of any other part of the habitable globe; they have not any care for the morrow; no terror of quarter day; can marry and have as many children as they like. All this, however, does not sanctify the institution of slavery, and should not abate the zeal of freemen for their emancipation. The friends

of free soil, as well as the abolitionists, should read from the Delta newspaper, published at New Orleans on the 27th of August, 1848, the speech, herewith, of General Preston, in relation to Mr. Fillmore, delivered at Lafayette, Louisiana. He is one of the most respectable, talented, and worthy citizens of that place, and whose object was to make capital for General Cass.

"After reading this speech, let the freesoil men say whether they will cast off Mr. Fillmore by voting for Mr. Van Buren; they cannot both be elected. By voting for Mr. Van Buren, they not only prefer General Cass to General Taylor, but they cast off Mr. Fillmore, and, what is of the highest importance, they throw away their votes. As it does not seem possible, in the present organization of parties, to elect Mr. Van Buren, I would say to all parties, as I would to man and wife in case of domestic contention, compromise your differences, yield your prejudices, abstain from all unkind reflections, and co-operate for the general good. How can the freesoil men, the abolitionist, and the slaveholder do this better, than by the support of General Taylor and Mr. Fillmore?

"To do any good to the colored people, some practicable plan must be devised to send them off, or to fit them for freedom at home. Suppose it were possible to turn three or four millions of uneducated free laborers, penniless, at once on this community, I would ask, would it be prudent to do so? Would our wives and daughters like to encounter such a mass? Would the German, Irish, or other laborers, like thus to be elbowed out of their accustomed occupation? If not, let them beware how they favor any project leading to such a result. And to these men I think I have a right to say a word or two, being a working man myself, and having, during a long life, been their fast friend and advocate, and especially so of the adopted citizens; the Irish in particular know this, and I say to them, if General Taylor should be elected, they will have a President whose benevolence is proverbial, and who will sympathize with the oppressed of all nations. I say this emphatically from a personal acquaintance with that good man.

"Very respectfully, your obedient servant,
"JACOB BARKER."

General Taylor was elected. Very soon after which Mr. Barker received numerous letters from candidates for office soliciting his interference in their favor. To one of these applicants Mr. Barker addressed a letter in words following. The extract from which it is taken is published by the Concordia Intelligencer:

"NEW ORLEANS, November 23, 1848.

"The result of the election is as you may

well suppose, very gratifying to me, and I shall rejoice if you can benefit thereby. If you should have occasion to refer to me for your qualification for office and devotion to the good cause, your draft will meet due honor at sight. The competition for office will be so great that but few can succeed under General Taylor's supposed plan of operations. Mine would be different. I should be for a new deal, not to turn out whigs to make place for democrats, nor to turn out democrats to make place for whigs, but to vacate all the offices on the principle of rotation in office; that the incumbents have held long enough for their full share; that a thorough investigation of their accounts is necessary, and that this cannot be had while they are in office. The offices being once vacant I should fill them with the most competent men to be found, without reference to political party distinction; and when any one of the present incumbents is found to have been particularly faithful and capable, I should not think his having been in office any objection to his reappointment, or to his being selected for any other office. You must be aware that it would be particularly indelicate in me to intermeddle in the appointments to be made unless applied to by General Taylor for my opinion; he knows me well, and that all I ask of him is to administer the government on sound democratic principles, such as I have published to the world all my life; and he may, therefore, think it advisable to confer with me occasionally. If he should confide in more able friends, it will not estrange me from his administration." * * * * *

"I hope he will so far carry out your views on the tariff as to recommend such a modification as will best protect domestic industry, always keeping within the bounds of our necessities, never collecting a dollar more than is wanted for the expenses of the government and to pay off the national debt. If this will not sustain domestic manufactures, let them fall.

"I hope he will also recommend the improvement of the navigation of the western waters, and such a modification of the independent treasury as will more perfectly secure a separation of the funds of the nation from the local banks, at the same time giving to all disbursing officers all the facilities a bank could give if we had such an institution.

"Should the sub-treasury, rather the independent treasury, law be repealed without providing a substitute, it would be a return to the pet bank system, the most odious that could be devised; and any administration that should do it would be doomed, as much so as we are all, to die. Treasury notes furnish a better currency than any bank ever did or ever could; yet there would be so much risk and difficulty in supplying such a currency that I should prefer to see a national bank established at Washington, with branches in such States as should authorize their establishment; yet if General

Taylor should ask my advice I should say to him, 'do not mention the subject; leave that matter to Congress—they are the people's immediate representatives, and there ought not to be a national bank until the people call for it through their immediate representatives.'"

General Taylor, very soon after his election, became convinced that he could not conduct the affairs of the nation without the aid of one of the great political parties—it required such a man as General Jackson to do that. The democrats, as a party, had opposed his election, and the whigs, as a party, had supported it; consequently he fell into the hands of the latter, and the democrats who had supported him again became active under the Jeffersonian flag. On this subject Mr. Barker made the following publication:

GENERAL CASS.

To the Editors of the Daily Delta: You have thought proper to refer to my political opinions. Unimportant as I know the opinions of any individual to be, I am nevertheless unwilling to be placed before the public in a false position.

You say that I vigorously opposed Gen. Cass at the last presidential election. In this you are mistaken, unless there was opposition in my entertaining the belief that the situation of our sons, brothers, fathers, and friends engaged in the Mexican war, was such that party considerations should yield to the great question of giving a vigorous support to that war.

In order to do this, it was necessary to counteract the influence of its opposers, who had acquired a majority in the House of Representatives of the Congress of the United States, and of their friends throughout the nation, who were insisting on making the administration declare for what they were fighting, before the necessary supplies of money, men, and munitions of war should be furnished to protect our patriotic citizens, who had exchanged their domestic comforts for the hardships of the camp, in a foreign and unhealthy climate, at the first call of their country. Thus circumstanced, the public good demanded a temporary suspension of party discipline.

General Taylor having declared emphatically that he would not be the President of a party, and having been the most energetic and successful supporter of the war, it was deemed expedient to propose him as a candidate for the presidency; and for the aforesaid reasons I embarked in his support with all my heart.

By the great skill and prowess of the candidate thus selected, and of his fellow-laborers in the field of glory, the enemy were whipped into submission before the election came on; yet, having enlisted for the campaign, I could not retire from the service until our brave com-

mander-in-chief had been safely escorted to the encampment destined for him at Washington.

The nomination of General Taylor took place before the nomination of General Cass, and therefore was not made in opposition to him; and so far from otherwise opposing General Cass, I never thought, wrote, or spoke a word against him in the whole course of my life; on the contrary, I have always been an admirer of his public course, from the breaking of his sword at Malden to the compromise of the questions which agitated the nation during the last session of Congress, inclusive, and particularly of the part he took when minister at Paris in relation to the quadruple treaty, and of the zealous support he gave to the war with Mexico.

I should rejoice to see the honors of the two first offices in the world conferred on him and some other patriot like General Persifor F. Smith, covered with military glory; yet if I have any influence on the question, it will be exerted in favor of the election of the nominees of the Democratic National Convention. It will be for them, and not for any individual, to pass on the choice between Cass, Woodbury, Douglas, Buchanan, Smith, Butler, King, and many other patriotic and qualified sons of this republic; and in support of such nominations, all those called Taylor Democrats will cordially unite.

Past experience admonishes us not again to trust our national affairs to men who will disappoint our most sanguine expectations; and, in order to ensure success, the individual selected must be such as will not allow any impediment or obstacle to be thrown in the way of our fellow-men, who emigrate to this land of liberty, becoming citizens according to the provisions of the laws of the land as they now exist.

This, in the present state of the world, I consider of such vast importance as for every other question to dwindle into comparative insignificance.

Your obedient servant,

JACOB BARKER.

From this time forward Mr. Barker exerted himself to the utmost of his power to procure the nomination of General Lewis Cass. The democratic convention deeming it best to nominate Franklin Pierce, Mr. Barker addressed the Jeffersonian Club, from which addressed the following extracts are made:

"FELLOW CITIZENS: Allow me to congratulate you on the nomination of Franklin Pierce and William R. King—a triumph of the greatest magnitude.

"This association was formed to carry out the principles of the illustrious Jefferson, which have always been advocated by Senator Cass. He is a veteran in the cause, always in the

battle field and in the front ranks. The talents and the zeal manifested by him for more than forty years in the good cause, induced the members of this club to exert themselves to procure his nomination. Other distinguished men had their advocates. To reconcile the conflict of opinions thus produced, the Baltimore convention deemed it best to overlook all the prominent candidates, and present to the people a new name, for whom there was not any organization, any clique, any body-guard. In carrying out this view of the subject, they selected Franklin Pierce with an unanimity scarcely ever witnessed in a deliberative body.

"In the nominations of Messrs. Pierce and King, we have a complete triumph of our principles, which is of far more importance than the mere triumph of an individual. And what better evidence can we have of the worth of Senator Cass, who was our first choice, than is to be found in the hearty and cordial approval of the nomination made, as manifested in the zealous manner in which he immediately came forward at a public meeting, urging his fellow-citizens to exert themselves in their support.

"This public testimony of General Cass to the merits of the honored individuals speaks volumes in their favor, as it also does in favor of their distinguished advocate.

"Our advices from every part of the nation are the most cheering. There is a perfect fusion of all sections of the party, and particularly so in *New York*, where individual preferences had occasioned the most disastrous results to the democracy, so that in place of the discord and bickering which have for years distracted their ranks and thrown the political power of the State into the hands of our opponents, there is now perfect harmony and more enthusiasm displayed than ever before was witnessed. In the Empire City at least 20,000 people assembled at their ratifying meeting, whose united voices in favor of Pierce and King rent the heavens, and stifled the roar of the thousand cannons that were sounding forth the glad tidings. And, subsequently, at the great mass meeting at Newburg, democrats assembled from every part of the country. At least 30,000 were on the ground; some fifteen steamboats were chartered to take passengers from New York on the occasion. They were all filled to overflowing. Among

the orators on the occasion were the Hon. John A. Dix, of New York, the Hon. Mr. Smith, of Connecticut, John Van Buren, esq., and many others; perfect unanimity prevailed, and the enthusiasm for Pierce and King surpassed anything ever before witnessed. The whole scene was magnificently grand, terminating with a perfect conviction of the success of our candidates. The more recent success of that old and often tried friend of democracy, Thomas H. Benton, of Missouri, and Governor Reid, of North Carolina, speaks volumes for the good cause.

"I have not the honor of a personal acquaintance with Franklin Pierce, while I had the pleasure to witness the patriotic career of William R. King, during the war with Great Britain. The nation was in the greatest trouble for the sinews of war. The federal party exerted themselves everywhere, in and out of Congress, to embarrass the administration and to impede the progress of the war, denouncing it as unjust and unnecessary, thus taking sides with the enemy. Mr. King was then a member of Congress from North Carolina; he was a particular friend of Mr. Madison; on all occasions sustained the war and the administration; his course ever since has been patriotic and onward; his nomination is, therefore, first rate.

"And, although not favored with a personal acquaintance with Mr. Pierce, I am familiar with his history, and know, from his uniform course in favor of the cause of his country, that a better selection could not have been made, and if I had as many votes as I have hairs on my head, Pierce and King should have them all.

"So much has been said, and will continue to be said by others, as to the particular merits of the nominees, that I shall not dwell further on the subject.

"Much has also been said about slavery, southern men, and southern opinions, all which I think had better be omitted. The question of slavery should not be considered open to debate; the Constitution settled that question.

"In selecting candidates, patriotism, virtue, and capacity for the discharge of the duties appertaining to the high offices in question, should be our only guide. Our polar star should be the Union, and our watchwords

should be the Constitution and the Compromise. The terms of the compromise, though not altogether satisfactory, were the best that could be obtained; and having been made, it must, at all hazards, be sustained as the best means of preserving the Union.

"I introduced resolutions at a public democratic meeting, held at the Louisiana Hotel, in February, 1851, in favor of the Compromise, the Union, and the Constitution, and told that meeting that whatever party should manifest the most zeal in favor of those three great measures would be in the ascendant. I failed to convince a majority of the persons there assembled of the expediency of being the first in the field with such an avowal. Many whigs who attended this meeting perceived the importance of the question, repaired to Donaldsonville, where a whig convention soon after assembled, which convention embodied, in their platform, the spirit of these resolutions, which had been offered by me at said democratic meeting, and the race everywhere has been for the supremacy in devotion to those several principles; and I have been made most happy in seeing them adopted by all parties and on all occasions.

"The strife has been, as I predicted it would be, who should exhibit the greatest devotion to the Union, the Constitution, and the Compromise. This city was lost to the democratic party by their reliance on the fact that there was not any disunion party in the State, and, therefore, useless to put forth such a platform; they should have been leaders and not followers in this patriotic course.

"All are now convinced of its wisdom, and there will not be any more faltering.

"There are occasions when true patriotism requires that party discipline should yield to public good. Such was the case when the prospect of disunion was overthrown by the compromise, as also during the progress of the war with Mexico; no such necessity is likely to occur again for a century.

"During the progress of that war our opponents had a majority in Congress. Mr. Clay proclaimed that the administration should be required to disclose for what they were fighting before further appropriations were made for continuing the war, and Mr. Calhoun wished our troops withdrawn from the siege of the city

of Mexico and our forces concentrated on the Rio Grande.

"The United States treasury was empty and the treasury notes depreciated. Under such circumstances many of the friends of General Cass, myself of the number, considered it far more important to carry out his principles, by a vigorous prosecution of the war with Mexico, than to elect him President. To effect this, it was deemed best to pursue such a course as would constrain the whigs to support a man favorable to the prosecution of the war. With this view the independent men of the nation nominated General Taylor, and the whigs were constrained to adopt their nomination, although nine-tenths of them preferred Mr. Clay; thus our plan was successful.

"It is true that peace had resulted from the success of our arms before the election, yet those who had put forth the name of General Taylor, having done it in good faith, they could not recede, and no man who knew me could, after my public declaration at the Commercial Exchange, that 'I had shipped for the voyage,' expect me to recede or relax until the setting of the sun on the 7th of November.

"Under these circumstances I embarked in favor of General Taylor, confiding in his published declarations that he would not be the President of a party; and although I wrote for the press and spoke at public meetings during the whole canvass, it was not at whig meetings I spoke, or for whig papers I wrote, nor did I ever advance a sentiment adverse to democratic principles; and no man in the nation could have been more disappointed than I was at the course pursued by General Taylor after he was elected President.

"On his arrival at Washington, he found it impossible to conduct the government without the co-operation of one of the great political parties. The democrats, as a party, had opposed his election, and the whigs, as a party, had supported it; he therefore fell into the hands of the latter. Had the Baltimore convention adopted, as I fondly hoped it would have done, the independent nominations, I am confident that Gen. Taylor would have pursued a course entirely satisfactory to them.

"Gen. Jackson encountered the same difficulty. When Mr. Monroe was elected President, he wrote him a letter urging him to

disregard party considerations, and select the best men in the nation for his cabinet and for other high offices. Yet, when the General became President, he found that would not answer, and brought about him none but those strictly of his own party.

"If a further motive for the perseverance in the support of General Taylor after peace had been concluded had been wanted, it would have been found in the wish to perpetuate and extend the renown of our victorious army, and which could not be so effectually done as by making the most successful general and the greatest captain of the age President of the United States.

"I never hesitated to commend the patriotic course of General Cass, and to bear testimony to his great worth. No expression was used wanting in respect for him, or at variance with those democratic principles taught me by Jefferson.

"When the battle was over, the necessity for the independent action no longer existed. The democratic supporters of General Taylor, all over the nation, returned with one accord to the democratic party, wishing to fall into the ranks as common soldiers, since which, none have surpassed us in devotion to the party.

"We exerted ourselves to the last to procure the nomination of General Cass. In this we have been disappointed by a certain class of men styling themselves 'Young America,' who have not gained anything but a mortifying defeat, while we have the gratifying reflection that the principles of Cass have triumphed, which is of far more importance than the triumph of any individual.

"'Young America' now professes a willingness to support our nominations; to do this in good faith they must fall into the ranks, and conform to the usages of the party, and not form separate cliques with the view of controlling the patronage of the new administration. The chief of that party, Senator Douglass, was one of the most eloquent orators at the great Newburg meeting; from the patriotic sentiments expressed by him and the zeal he manifested on the occasion, it is evident that he will go heart and soul with the party for its general good. The same with John Van Buren, esq.

"Mr. Jefferson remarked to me that there

was much complaint about his selections to fill offices. 'This,' said he, 'is inseparable from the nature of our institutions; the people should blame their delegates, not the President; it is impossible for him to know the merits of the innumerable candidates spread over such an extent of country. The President's rule is, in most cases, to be guided by the recommendation of the members of Congress from the district; they come here fresh from their constituents, and are presumed to know their opinions and preferences, and if they make impolitic recommendations, the people must, thereafter, wrap their mantles about the heads of more discerning men. Signatures are so easily obtained to petitions, and town meetings are so easily controlled by interested parties, that I have deemed it the safest course to be guided by the representative of the people in Congress.'

"These considerations should have admonished 'Young America' to have wheeled into the ranks, and obtained an influence by their zeal and exertions in the common cause, and not to have attempted to take the control from the successful party. The 'old fogies,' if you please.

"All we wish is the success of our principles, and as to the distribution of office, we have the utmost confidence that the men best qualified to perform the duties will be selected; whether they be of the 'Young America' class, 'Old Fogies,' or Barn-burners.

"We extend the right hand of fellowship to them all, adopting the principle of 'friends in peace, enemies in war,' and so long as they are disposed to give a free and full support to the election of Pierce and King, we shall regard them as friends.

"We have a great battle to fight. The present incumbents will not willingly yield possession of the expenditure of fifty millions annually from the national treasury, and nearly as much more from the treasury of New York and Louisiana. This is too great a boon to be given up without a desperate struggle.

"The democratic party are now happily united in every State in the Union. The tomahawk has been buried, and we are once more smoking the calumet of peace. This, with a full organization, will ensure an easy victory. We are working men, and when the day arrives our battle-axes will be found not only bright,

but sharp; and if every man does his duty, as I trust he will, we shall on the first Monday of November next be electrified with the cry of 'Victory! victory!' throwing up our caps, proclaiming our party has triumphed.

"The money power with which we have to contend is not only formidable, but frightful, yet it will vanish before virtue, intelligence, and the zeal of the hard-working population, like an untimely snow of May and the morning dews of June before the meridian sun.

"Pure and unspotted as our candidates are, the envenomed shafts of detraction have already been let loose against them by our opponents. It was to have been expected that the delusion which led to the coffin hand-bills, the slaves in chains, the log cabins, and cider barrels had passed away, and that reason had resumed her seat. This gratifying anticipation is not likely to be realized; the private worth of the candidates on both sides should have been a guarantee against every unworthy insinuation. We war against measures, not men; for principles, not for office; and the democratic party will assuredly confine their opposition to a manly criticism of the capacity of candidates for the discharge of the duties of the offices for which they are put forth, and a fearless criticism of the measures which have been pursued by the two parties.

"Our opponents say there are not any longer any points of difference between the two parties. Why, then, all this contention? We have got all the offices, say they, why not leave us in quiet possession of our very comfortable seats? We might content ourselves by asking how you got office, what became of your complaints, loud and long, reiterated from the days of Jefferson against displacing faithful and capable officers to make place for political favorites? Why have you discarded President Fillmore, and put forth General Scott? Surely not for the general's peculiar fitness for the discharge of the civil duties of the office, not for his diplomatic skill? Not for logic and perspicuity in prose writing. He is beyond all question a great military captain; his deeds of valor at Lundy's Lane and in Mexico have won for him imperishable honor, and for his country imperishable renown. Yet his military exploits in nowise qualify him for the duties of the closet any more than they do to be a bishop.

"Our political family is sick. We must call in such a physician as will be most likely to cure the patient, as we did in 1799. Our political family was then sick, we called in the illustrious Jefferson in 1800, after the most desperate political battle ever fought in any country. The first fruits of this glorious victory was the dismounting the twelve midnight judges whom our opponents had, in the agonies of death, at the last moment, endeavored to rivet on the people for life. We also refused to continue the odious alien and sedition laws, the land and the stamp tax, and reduced the period of probation for exiles from foreign oppression, before they could have the benefit of citizenship, from fourteen years to *five* years. Here were issues of the deepest interests, and why are they not now, as then, issues between the two parties? The reason is obvious, because we have whipped our opponents out of them, consequently they are no longer made questions. And is such a victory any reason why the vanquished should be allowed the possession of all political power and influence?

"We are now called upon to battle with the same party, then called the federal party, sometimes the British party, the people's party, the bank party, and now the whig party. No matter by what name they are designated, it is the old federal party with which we have to contend. The members are indignant at the neglect of Messrs. Clay, Webster, and Fillmore; yet they will, before the day of battle, for the most part, wheel into the ranks and play the subservient part to the abolitionists. When young I took an active part in this battle. It is more than fifty years since I addressed a political meeting at the old wigwam, kept by Mr. Martling, at the junction of Chatham and Nassau streets, New York, urging the friends of freedom to exert themselves in the good cause, incurring the displeasure of the federal party, who denominated a certain class of us as '*Pat McCoy's Ragged Regiment.*'

"During the war with Great Britain the nation was in distress for money to carry on the war. The federal party opposed a high tariff. When she had surmounted her financial difficulties they became clamorous for a high tariff. During such a distress for money the democratic party proposed to renew the land tax for one year, and the federal party opposed this

financial measure and caused the bill before Congress to be rejected, offering to support it if made permanent, as it was under the administration of the elder Adams. On that occasion the son-in-law of Mr. Jefferson, John W. Eppes, from Virginia, then chairman of the Committee of Ways and Means, told them that the party had fought too hard a battle to get rid of an unnecessary and oppressive tax ever again to put themselves in the power of the President or of the Senate to burden the people with that tax when it was not necessary; that it had now become necessary, and that they would impose it for one year, at the end of which time they would re-enact the law, if the necessity continued, and so on, from year to year, to all eternity; but that the House of Representatives would never again yield the power of saying when the tax should cease. The federal party was obdurate and rejected the bill. Every other financial measure of the administration was also opposed; yet they succeeded in bringing the war to an honorable termination, restoring the national credit, paying off all its debts, establishing and maintaining the specie circular and a specie currency, and by establishing the independent treasury the finances of the nation were separated from all banking institutions—a boon worth a seven years' war.

"The democratic party are, and always have been, the strenuous advocates of the extension of the rights of suffrage and of universal education, as the best means of preserving our liberties. We abolished the law which made the possession of real estate a necessary qualification for a vote. This lordly doctrine was carried so far in New York, previous to the election of Jefferson, that a landholder could vote in as many wards as he owned real estate.

"Believing that the Constitution does not authorize the establishment of any great system of internal improvements, it is not necessary to discuss the policy of such a measure; and that if it was otherwise, it would be impossible to have harmonious action in the matter; every village, town, city, and county in the nation would consider their claims the best. Thanks to the immortal Jackson for vetoing the Maysville road bill, thereby preserving the Constitution and saving the national treasury from bankruptcy, as there were more projects con-

nected therewith before Congress than could have been paid for in a hundred years. And while Franklin Pierce is in favor of reasonable appropriations for the improvement of harbors and rivers, he denies the constitutional power of Congress to adopt any general system of internal improvements to be paid for from the national treasury; hence our opponents assume that he is opposed to removing the raft in Red river, and to deepening the water at the mouth of the Mississippi; also to extending the aid of the government to the Opelousas and Jackson railroads, by giving the right of way through the public domain. In this they are greatly mistaken. I call on all good citizens to discountenance all such calumnies; my word for it, he will be in favor of all these measures.

"If the old federal party should regain power and feel sufficiently strong, can any man doubt but that they will re-enact all those laws which they have been compelled to abandon. Let us take a retrospective view of their course. They opposed the election of Jefferson, and did all in their power to decide the question in favor of Aaron Burr. When Louisiana was purchased, they villified Jefferson, and accused him of being under French influence, of having sent the ship-of-war *Hornet* to the Helder with two millions of money as a tribute to Bonaparte; they represented the money paid for Louisiana as so much thrown away—that we got nothing for it but a prairie pig and salt mountain.

"When Jackson, the British minister, was dismissed for having insulted the President and administration, they feasted and honored this discarded minister with balls and all sorts of attention. Let it be remembered that Pierce was shot at the helm, when navigating his unarmed vessel along our coast from New Jersey to New York, by a cannon ball from the British ship *Leander*, which was cruising off the coast.

"Their course has ever been the same. They reviled the embargo of Jefferson, the non-importation laws of Madison, the war with Great Britain; used every possible endeavor to palsy the arm of the government, to blight the credit of the nation, constantly calumniating all those who lent money, or in any way contributed to the prosecution of the war. They would not

allow their militia to cross the line in pursuit of a retreating enemy who, with their Indian allies, had dared to invade our territory, scalping our women and little ones, and applying the torch to every town and hamlet they passed through.

"The resolutions of Massachusetts, that it was unbecoming a moral and religious people to rejoice in victories won in such a war as that against Great Britain, together with the objects and proceedings of the Hartford convention, are sufficient commentaries, without any necessity of enlarging thereon. They were not for us, and therefore against us; and will you give such men power, merely because they say there is no longer any difference between the two parties, when not one of these differences has been yielded until after battle and defeat. They upheld and defended the Bank of the United States, the most profligate, corrupt, and dangerous institution ever known. They opposed the annexation of Texas. They not only opposed the war with Mexico, but did all in their power to retard the prosecution of that war, and when peace came they did all they could to disparage the treaty.

"The restrictive measures so violently opposed by the peace party, brought Great Britain to terms, compelling her to abandon her orders in council, which was done before she heard of the declaration of war. *Had that event happened before the declaration of war, the President was authorized to rescind by proclamation the restrictive system.* Counting on his doing so, and that the war would cease, the fleets of Britain did not reach our coast for three months; nearly all our vessels therefore got safely into port. It has been the practice of Britain to *anticipate* other nations in declaring war, always striking the first blow. This was an exception. The peace party in the United States had induced their friends in England to believe that Mr. Madison could not be 'kicked into a war,' otherwise the orders in council would have been repealed much sooner, as Britain never intended to war with the United States; we are too good customers. Mr. Madison refused to issue his proclamation, saying it was too late, the war having begun must go on, until all points of difference were settled by treaty.

"But for the native American principles of

Gen. Scott, democrats could support him with much more grace than the whigs can support him; he was an original Jeffersonian democrat, the friend of Madison, the supporter of all their measures, and particularly of the war of 1812; he also supported the war with Mexico, and vindicated the peace made; all which measures the whig party opposed to the utmost of their power, and now they allow their best men to be put aside by the office-holders, their minions, and a few tavern rowdies, who manage to control the ward and town meetings, while the great body of the party decline to mingle with the crowd on such occasions.

"Our opponents don't seem duly to have appreciated the advantage we have over them. Had they considered our frantic joy, our indescribable delight on the receipt of the news of the capture of the Guerriere, the victories of Perry, McDonough, Hull, Brown, Scott, Decatur, and others, in the war of 1812, and the news of the victories of Taylor and Scott in the war with Mexico, the election of Jefferson, Madison, Jackson, and our other successful chiefs, and compared the same with their disappointment and mortification at such results, which so generally pervaded their ranks, they would have better understood matters; their envy, and consequently their enmity, was continually excited to the highest degree, and therefore they dwelt in a most unhappy atmosphere.

"All men are fond of displaying where they think they perform well. General Scott seems to have an inexhaustible appetite for combat; he has fought his own battles as well as the battles of the democratic party and the battles of the nation.

"In looking over the history of his life, we find him at odds with Generals Wilkinson, Jesup, Jackson, Macomb, Gaines, Worth, and Taylor, the latter complaining bitterly of the treatment received at the hands of Scott to the day of his death. We find him also at variance with Governors Clinton and Marcy. His disposition, if not petulant, must be hasty. To have sustained himself under such a pressure of opposition he must have managed his affairs with consummate ability, and had great good luck. However, the friends of those great men will now have an opportunity of putting in a

rejoinder, the effect of which remains to be seen.

"General Scott made a great mistake in throwing himself into the arms of the men against whose measures he had fought all the early part of his life, and particularly into the arms of the abolition branch of that party; thereby he has thrown away thousands of friends who would have gladly supported him on his own individual merits. His advocacy of the annexation of Canada cannot advance his interests in the southern States, and his Native American doctrine must destroy every interest he had with the adopted citizens.

"Should the great body of the whigs take this occasion to let the office-holders and their minions know that if they wish their support they must cease their intrigues against those most faithful and most capable, who have devoted their whole lives to the cause of the party, should they do this, General Scott will be left in a miserable minority.

"Why was the Native American Society formed? The most pernicious association ever formed in these United States. Why these repeated attempts to prolong the period of probation for naturalization, to exclude good men from participating in the honors and profits of office on account of their birthplace? The reason is obvious, it flows from the principle which they inherited from their fathers, and whenever conceded it is from a knowledge of the impolicy of any attempts to revive them.

"The minister plenipotentiary at London interposed with the British government to prevent those worthy patriots, Emmett and others, from emigrating to the United States, and thereby caused their detention in the gloomy cells of British prison-houses for months, if not for years. This course, although unauthorized by our Constitution or laws, was approved by the federal party; and when this minister was brought forward for the governor's chair of New York Mr. Emmett proclaimed the afore-said fact. For this presumption the leading men of that party cut his acquaintance, and endeavored to trample him under foot, but his many virtues, his great talents, extensive literary acquirements, and, more than all, his unsurpassed eloquence, triumphed over every opposition, and he left the world respected and lamented by all. And is there an Irishman

that would support a political party known to be hostile to all their aspirations?

"The Germans, Hungarians, Swiss, Irish, and all others who have emigrated from their fatherland, are equally interested in exerting their political influence against a set of men who are known to entertain opinions and feelings adverse to human liberty. I have fought the battles of the oppressed for fifty years, and bid them beware how they expose this the only retreat on earth from the iron will of tyrants to be closed up, for the want of timely precaution in erecting barriers against the enemy.

"So highly did the adopted citizens appreciate my advocacy of their cause that the good old sixth ward (New York) gave me a freehold democratic majority, the first ever given in that ward. Every possible encouragement should be afforded to foreigners to flee from their oppressors; here the battle of freedom is to be fought; not a gun should be fired, nor a drop of blood wasted on the other side of the Atlantic; to those of foreign birth we are indebted for the great progress in constructing railroads and canals; in bringing the wild lands under the dominion of the plough, hoe, and sickle, all which greatly promote commerce, consumption, and revenue, and will enable this nation to give law to the whole world one hundred years sooner than she otherwise could do. This consideration is a full equivalent for the privileges conferred by making them citizens of this republic.

"As to General Scott, he was, like all other free citizens, at liberty to form his own opinions. Having done so, he put them forth publicly for the repeal of the naturalization laws. I lament to see so brave a man offering modifications making bad matters worse—he had much better renounce altogether his former opinions and come out manfully for the cause.

"The idea that a foreigner who has served in the navy or army one or two years, without any other residence, shall be entitled to citizenship, is very well in its place; but it is idle to suppose that this will operate favorably on foreigners, all of whom are to be excluded, if General Scott's doctrines of repealing all the naturalization laws should be adopted, from citizenship, with this trifling exception, when nine hundred and ninety-nine of every thousand of them have no expectation of rendering such

service in a nation at peace with all the world, and likely to be so until the present generation has passed away; you might as well send a man to prison to preserve his liberty.

"We are not to look to what they promise, to what they profess, and the expectations they may encourage. They are, like the tree, to be judged by its past fruits; they have got the offices, the patronage of the government, to retain which they will promise anything and everything, sacrificing their best men, as well as all the political principles they have heretofore professed.

"Suppose they should elect General Scott, and he should be disposed to carry out, in good faith, every expectation he encouraged, it would avail nothing; he could not do it.

"It is not with General Scott we have to war; it is with the old federal party. General Taylor was elected with a confident expectation that he would not be the President of any party.

"The good old man went to Washington deeply imbued with these opinions and feelings, but he found it impossible to carry on the government without the co-operation of one of the two great political parties. The whigs, as a party, supported his election, he, therefore, fell into their hands; and if there were no issues open or pending, I would like to know why the collector of the port of New York, one of the most faithful and capable men ever in office, and ten thousand others, without any other fault than their political opinions, were removed.

"In the case of the election of Harrison, as well as in the case of General Taylor, Mr. Clay was sacrificed by his political friends, for the same reason that Mr. Fillmore has been now sacrificed and Mr. Webster neglected.

"No one ever has, or ever will contend, that General Harrison, General Taylor, or General Scott had talents for the executive department, equal to those of Mr. Clay, Mr. Webster, or Mr. Fillmore. Why, then, were they selected? Merely for their supposed availability, to enable the party to monopolise the crumbs of office, and the power to tyrannise over their fellow-men.

"The magic influence of the single word 'availability' seems to have controlled every other consideration; on this occasion, the whig

party will find out that they have missed a figure in estimating what would be available. Why did not the whigs put forth fearlessly men of their own way of thinking, who had served them with ability and fidelity? Why oppose all our proceedings, and then select from the most efficient supporters of our measures their standard bearers?

"They opposed the embargo and non-importation laws, after which they selected John Quincy Adams for their standard bearer, although one of the efficient supporters of those measures.

"They opposed the war of 1812, and afterwards selected General Harrison for their standard bearer, who was among the most ardent supporters of that war.

"They opposed the war with Mexico, and immediately after its successful termination they selected Gen. Taylor, distinguished in that war, as their standard bearer.

"They opposed the siege of Vera Cruz and the city of Mexico, and found fault with all the proceedings in relation to the Mexican war, as well as in the war of 1812, and now select Gen. Scott on account of his military prowess in those wars.

"This looks like attempting to monopolize our thunder, a course totally unworthy of a great, high-minded political party.

"Gen. Scott helped us to whip the British, consequently helped us to whip the federal party. He helped us to whip the Mexicans, consequently helped us to whip the whig party. I dislike to take part in opposition to such a man, nor would I if I was not satisfied that, if elected, he cannot escape the designs of his abolition and other whig supporters.

"It is not strange that such an array of facts should have led the friends of Clay, Webster, and Fillmore to resolve to remain at home, and not longer to track after those whose only object is the division of the spoils.

"Had not their selfishness excluded every other consideration, they would not have embittered the dying moments of Clay by disregarding his opinions and wishes, by discarding Mr. Fillmore, who had been faithful to their party, and who was every way qualified for the office, and to whom the only objection is, that he is a whig of the old school.

"The indignity offered Mr. Clay would no

have appeared in such glaring colors had they not selected in his place a military chieftain. They did this knowing that Mr. Clay held opinions in relation to military rule, expressed by him in 1828, and maintained ever after, namely:

"I had thought that if any one more than all other principles characterized the term 'Republican Party,' it was their ardent devotion to liberty. I had supposed that the doctrines of that school had taught us to guard against the danger of standing armies, to profit by the lessons which all history inculcates, and never to forget that liberty and the predominance of the military principle were utterly incompatible. In this modern, new fangled and heterogeneous party, Cromwell and Cæsar have recently found apologists. The judgment of centuries is reversed, long established maxims are overturned. The Ethiopian is washed white, and the only genuine lovers of liberty were the Philips, the Cæsars, the Cromwells, the Mariuses and the Syllas of the former ages.

"It is time for slumbering patriotism to awake, when such doctrines as these are put forth from the Capitol and from popular assemblies. It is time that the real republican party—that party, under whatever flag its members may have heretofore acted, that party which loves freedom for freedom's sake—justly to estimate the impending perils, and to proceed with an energy and union called forth by the existing crisis in the republic."

"The soundness of Mr. Clay's views are sadly exemplified in the military despotism to which France is now subject. What encouragement have the young whigs to exert themselves in the cause of such a party, who slight merit and who overlook the essential services rendered; with whom talent and merit are no longer a passport to preferment.

"The democrats nominated Jackson for the qualities of his mind particularly adapted to the duties to be discharged; Jefferson for his transcendent talents, patriotism, and diplomatic skill; and the immaculate Madison for his private worth and just appreciation of the people's rights.

"The war against Britain was absolutely necessary; she trampled upon our rights; she cut us off from the trade of the principal European nations by her paper blockades; she impressed our citizens from our vessels, and made them fight her battles; she seized our ships and plundered their cargoes on the high seas; she compelled them on the great highway of nations,

returning from friendly ports with the proceeds of our produce, to call at her ports, pay a duty thereon, and take a license to come home. On the arrival of the first ship at Baltimore what did our people do? She was from Holland, with a cargo of gin, purchased with a cargo of Carolina cotton; they took the gin to the fields and made a bonfire of it. The President had no alternative but to recommend war against a nation practicing such outrages, and who had turned a deaf ear to all our remonstrances.

"In evidence of Mr. Madison's great worth, I beg leave to call the reader's attention to a letter of General Washington,* for the publication of which we are indebted to the Hon. Pierre Soulé, who introduced it in his speech in the United States Senate, for which, as well as for the able and eloquent manner in which he has represented this State, I feel very much indebted to him. Although always an admirer of Mr. Madison, I never before met this letter; his extreme modesty, like that of Franklin Pierce, would not allow him to give it to the public, although the author had been many years dead when Madison was canvassing for the presidency, and assailed throughout the whole breadth of the nation most violently by men claiming to be the disciples of Washington.

"Such are the men the democratic party selected to carry out their principles, and it is such men who will prove to be the most available; hence the friends of good government anticipate with the utmost confidence the election of FRANKLIN PIERCE and WILLIAM R. KING by triumphant majorities.

"JACOB BARKER."

Mr. Madison's second presidential term being about expiring, the friends of Mr. Clay confidently expected that he would succeed to the presidency. It was supposed that on his return from his peace mission to Ghent he would be the most popular candidate. Mr. Barker was among his admirers, and when the packet, on which he and his associate, Mr. Gallatin, had embarked, was signalized, off Sandy Hook, a hard norther prevailing at the time, a revenue cutter, with Mr. Barker on board, was dispatched to bring them to the city. What was called the "era of good feelings" had taken too deep a root, which, aided by the patronage

* To be found in page 33 of this book.

and influence of the then administration, was too powerful to be resisted. Mr. Clay had been too ardent a democrat to suit the times and he declined to allow his name to be used in opposition to the Congressional caucus, which had decided, by a small majority, in favor of Mr. Monroe.

Mr. Clay and Mr. Gallatin were both sterling democrats of the Jefferson school, although they subsequently became estranged from the party, the cause of which is too well known to require comment.

When the nation was agitated with the Cuba question and the question of neutral rights, growing out of the coalition between France and England, pretending an extension of neutral rights and hostility to privateering, Mr. Barker made the following publication in a New Orleans paper:

"PRIVATEERING.

"When a boy, my uncle told me not to go fishing where I could not get a glorious nibble, much less a bite. Queen Victoria seems to have profited by the same admonition; hence the significant words in her declaration of war against Russia:

"It is not the *present* intention of her majesty to issue letters of marque for the commissioning of privateers."

"A useless expense it would be to send out privateers against Russia, when she has no foreign commerce, and when the allied powers proclaim the blockade of the Baltic and Black sea; consequently, when the ice disappears, the blockade will not allow bait enough to escape to attract a glorious nibble, much less an electrifying bite. Hence this contrivance to induce all sailors to enter on board national ships. Well may the English and French say for the present privateering will not be allowed, in the hope of cajoling the United States into such an arrangement.

"The only arrangement the United States will make is that private property shall be respected, at sea and on shore, during war the same as during peace. Anything short of this would go to allowing the large fleets of the enemy to annihilate our commerce, without a corresponding effect from our privateers on their commerce. What we insist on is the right of firing our pistols so long as they fire their big guns.

"In case we should be drawn into war, self-preservation will force on us the necessity of exerting all the power which God and the arts have conferred on us to do mischief to the enemy.

"We do not understand why France and England should, at this particular juncture, attempt to embroil the United States in this

matter. She is at peace with all the world; knows her duties to the different belligerents; and, while she scrupulously performs those duties, she will not degrade herself by an agreement not to sin.

"Those good souls are now prating about the immorality of privateering; they should remember that their national ships of war stole flour from the quakers at Alexandria, after having applied fire and fagot to the legislative hall and literary institutions, and to the President's house at Washington—the unfortified city.

"In the battle of trying which can do the other the most harm, our main reliance will be on the enterprize, intrepidity, and powers of our brave tars, in which traits of character they excel those of all other nations. Well may the British and their allies wish us to abandon the use of that, the most powerful engine we have, to make the war tell.

"But the friends of good morals preach as much as they please against war in all its forms; without any of this hypocritical whining about any particular branch or form of war, we admit that it is all wrong, and should be avoided whenever it can be done consistently with national honor.

"Our alleged appetite for Cuba seems to attract much attention in Britain. Although fond of sweet things, we do not want Cuba; we have already more sugar land than we can make profitable. What we do want is to see the oppressed creoles of that beautiful island rise in their might and break the chains imposed on them by their despotic rulers. All that is required to enable them to effect so holy a purpose is the repeal, on our part, of what are called the neutral laws—not an increase of our navy. Relieve the people of all apprehension of government interference, and remove all penalties, and they will at once do the needful towards aiding the Cubans to establish and maintain their independence.

"NESTOR."

ADOPTED CITIZENS.

Great efforts had always been made by the party in opposition to the democratic administration of the general government to induce adopted citizens to vote their ticket; one of the means resorted to by a few thoughtless electioneers was, to induce a judge at Lafayette, of their own party, to issue naturalization papers to persons not duly qualified; the opposing party discovering this, some of their electioneers, equally thoughtless, used this judge in the same way in favor of their party. This thing becoming public produced a great excitement, and became the subject of legislative investigation. At this time Mr. Barker had

been appointed one of the inspectors of the pending election. The selection of inspectors was vested in the opposition party, consequently two-thirds were of their political faith. They held a caucus and resolved to reject, without investigation, the votes of all who had been naturalized by the said judge; he had been many years in office, and issued a large number of legitimate certificates of naturalization. Mr. Barker considering such indiscriminate rejection would be a violation of his oath, an invasion of the vested rights of many citizens, notified the court from whom he received his appointment that he could not be a party to the carrying out of this manifest injustice, and asked the appointment of another in his place; the request was not granted. The election came on in the rotunda of the St. Charles Hotel. It was filled to overflowing. On the presentation of naturalization papers from the judge in question, it was proposed to reject them without investigation. This was resisted by Mr. Barker, who insisted that the case should remain under consideration the whole day and no other vote received until it was decided, providing the other inspectors adhered to the objectionable caucus resolution; this produced very great excitement among those attending the polls. Violent speeches were made threatening personal violence. Mr. Barker remained calm and firm in his purpose. The matter was compromised by the adoption of a separate box in which to deposit ballots of all persons who had been naturalized by the said judge, that they might be subsequently investigated by competent authority, after which the election was conducted with great harmony. The majority being greater than could be controlled by these votes, no investigation took place.

Mr. Barker never has taken part in sectarianism of any kind; he has been admonished by the history of the persecution of the quakers and other sects to be aware of how he encouraged the feeling that seems to be growing up against the Roman Catholics; there are good and bad in all societies; they should be allowed to work out their own salvation in their own way and not pin their faith to the sleeve of another. In the affairs of every individual religion is his republic, which he should be allowed to govern in his own way;

it is a secret converse between him and his creator, and the most acceptable worship we can perform is in our closets, in secret devotion, removed from human observation. All we have to do is to keep our hearts clean and continually in a state of prayer; observe this every one according to the forms of his own religion without inquisitorial interference.

Those who inconsiderately embark in the present crusade against foreigners and Catholics ought to remember that it may be their turn next to fall under the influence of fanaticism or party spirit. Nothing is more uncertain or unstable than political or public favor; and Mr. Barker would suggest to those who are crying out loudly against foreigners to consider how far we, as a nation, are indebted to them for our prosperity and present condition. Those from every clime have been eminently useful; the Irish were particularly so in the revolutionary war. An account of the services of some of those from the Emerald Isle will be found in the history of the Irish settlers of North America, from which the following is taken:

[From the History of the Irish Settlers in North America.]

"The first blow struck for American independence was by an Irishman. News having reached Portsmouth, New Hampshire, that the export of gunpowder into America was 'proclaimed,' Major John Sullivan and John Langdon, Irishmen, with a company of the townsmen, surprised the fort of Newcastle, took the captain and five men, carried off one hundred barrels of gunpowder, fifteen light cannon, and the entire of the small arms, all of which afterwards did effectual service at Bunker Hill. For this act Sullivan and Langdon were elected to the Continental Congress, which met in May 1775, and Sullivan was the same year appointed by that body one of the eight brigadiers general of the American army.

"The following Irishmen commanded at the battle of Bunker Hill: Stark and Reed, both of Londonderry, Ireland, commanded the New Hampshire militia, led on by Brigadier General Sullivan, Major Andrew McClary, whose great size and desperate valor made him peculiarly conspicuous, fell while crossing 'the Neck;' eighteen others of Stark and Reed's command were killed, and 89 were wounded in the same eventful field. The contribution of the Irish settlement in New Hampshire, to the revolutionary forces, may be judged from the share of the small town of Bedford.

"Colonel Daniel Moore, Major John Coffe. Captain Thomas McLaughlin, Lieutenant J. Patten and five sons, and 63 others, in all 72,

many of whom lost their lives in the glorious cause of their country.—*History Colony of N. Hampshire*, vol. 1, page 291. Brigadier General Richard Montgomery, also commander at Bunker Hill and during the course of the war. A full third of the active chiefs of the army were of Irish birth or descent. Of the rank and file, New Hampshire's contingent were in great part of Irish origin, and in other colonies recruiting prospered in the Irish townships. The command of the ordnance department was conferred, by Washington, on Henry Knox. The Irish in New York early enlisted in the cause of the revolution, and James Clinton, Irish, in 1775, was elected colonel of the third regiment raised in that colony. His brother-in-law, Colonel James McCleary, commanded in the same militia, and is called 'one of the bravest officers America can boast.' The elder brother, George Clinton, after the death of Montgomery, was appointed brigadier general for New York, and in 1776, with his two kinsmen, gallantly defended the unfinished forts on the Hudson, and held the Highlands against the repeated assaults of the British general, Sir H. Clinton. By this check he prevented the junction of that commander with General Burgoyne, which, with General Stark's (Irish) victory at Bennington, cut him off from either base, and compelled his surrender at Saratoga—a victory which completed the French alliance and saved the revolutionary cause.

"In Pennsylvania, where the Irish were more densely settled, their martial ardor was equally conspicuous. They inhabited chiefly in Ulster and Chester counties, and in Philadelphia. In the summer of 1775 Congress ordered the raising of several regiments in Pennsylvania, and, among the rest, gave commissions to Colonel Anthony Wayne, William Irvine, William Thompson, Walter Stewart, Stephen Moylan, and Richard Butler, all Irishmen. The regiments of Wayne, Irvine, Butler, and Stewart, formed part of the famous 'Pennsylvania line.' Thompson's was a rifle regiment. Moylan, a native of Cork, after being aid-de-camp to Washington, and commissary general, was finally transferred to the command of the dragoons; and in almost every severe action of the war, where cavalry could operate, we meet with the fearless 'Moylan's dragoons.' Doctor Edmund Hand, who came to Canada with the Irish brigade as surgeon, was appointed lieutenant colonel in Thompson's regiment, and on the 1st of March, 1776, raised to the full rank of colonel, and on the 1st of April, 1777, was promoted to be a brigadier general. Colonel Butler, a sound shoot of the Ormond tree, and his five sons, displayed equal zeal, and merited from Lafayette the compliment that whenever he 'wanted anything well done he got a Butler to do it.' So actively did these gentlemen exert themselves that on the 14th of August, 1776, a great part of the Pennsylvania line arrived in the camp at Cambridge,

which enabled General Washington, by the beginning of September, to put his plans for the siege of Boston into execution.

"The first commodore in the American navy was John Barry, a native of county Wexford, Ireland. He has been called by naval writers 'the father of the American navy.' The personal character of Commodore Barry was made of noble stuff. When Lord Howe tempted him by a vast bribe and an offer of a British ship of the line, he replied: 'He had devoted himself to the cause of his country, and not the value or command of the whole British fleet could seduce him from it.' He never was ashamed of his native land, and, after the peace of Paris, paid a visit to the place of his birth, which fact is still remembered with gratitude in his native parish. When hailed by the British frigates in the West Indies, and asked the usual questions as to the ship and captain, he answered: 'The United States ship Alliance, sancy Jack Barry, half Irishman, half Yankee—who are you?'

"In 1778, Captain James McGee, (Irish,) while commanding 'in the service of the commonwealth,' was shipwrecked in Massachusetts bay, and seventy-two of his men lost. Two of the earliest prizes carried into the United States were captured by five brothers of Machias, named O'Brien, natives of Cork, two of whom, Jeremiah and John, afterwards held naval commissions.

"On board the other ships of the new navy were several Irish officers of minor grades, some of whom afterwards rose to independent commands. Every one knows that Porter was of Irish descent, and McDonough of Irish birth. Under Commodore Barry, the most brilliant ornaments of the American navy were trained—such as Murray, Dale, Decatur, and Stewart—all of whom became conquerors and commanders. In the war of 1812, all Barry's pupils rose to eminent distinction. Colonel Fitzgerald, another Irish officer, was aid-de-camp to General Washington. Of the ninety-three Philadelphia merchants who, in June, 1780, pledged their property to raise funds to supply the troops who were in a state of mutiny—and only for the extraordinary efforts of patriotism on the part of these merchants the army would have utterly fallen to pieces—twenty of those merchants were of Irish origin, and subscribed nearly half a million of dollars. Charles Thompson, an Irishman, in 1774, was chosen secretary to the first Congress, and continued in that onerous office until 1789, when the formal adoption of the Constitution closed his functions. He wrote the Declaration of Independence from Jefferson's draft, and was the medium through which Franklin received his instructions, and Washington was informed of his election for the first President of the Union. He died on the 16th of August, 1824, within ten miles of Philadelphia. Mr. John Dunlap, a native of Strabane, Ireland,

who, in 1771, issued the 'Pennsylvania Packet,' (the first daily paper published in America,) was printer to the convention in 1774, and to the first Congress, and was the first who printed the Declaration of Independence. That august document, copied by Charles Thompson, was also first read to the people, from the centre window of the hall in which Congress first met by Colonel John Nixon, an Irishman. In 1815, Alderman John Binns, of Philadelphia, another Irishman, published the document for the first time, with a *fac simile* of the signers' signatures.

"The Declaration of Independence was signed by fifty-six names, of whom nine were of Irish origin. Matthew Thornton, born in Ireland, 1714, signed for New Hampshire; James Smith, born in Ireland, 1713, signed for Pennsylvania; George Taylor, for same State, born in Ireland, 1716; George Reade, signed for Delaware, he was born of Irish parents. It was he who answered the British tempter—"I am a poor man, but, poor as I am, the King of England is not able to buy me." Charles Carroll, of Carrollton, was of Irish descent, and very wealthy; Thomas Lynch, for South Carolina, of Irish descent, as was also Thomas McKean, who signed for Pennsylvania, and Edward Rutledge, for South Carolina."

General Lafayette, of France, De Kalb, of Germany, Kosciusko, of Poland, Pulaski and others, also fought valiantly in the war of our independence. The reader should think of this, and allow justice to triumph over all other considerations.

Adopted citizens are generally fired with democracy, and vote the republican ticket. This is their great offence. Should they embrace the opposite party, and support their candidates with half the zeal they do the other, we should not hear a word of this opposition, except where it might be fostered by the anti-republican spirit of sectarian bigotry. As to their participating in office with natives after they become citizens, there does not seem any good reason for denying to men who have to fight for the country, to pay taxes, to serve as jurors and as firemen equally with the natives, a participation in this boon. It is unfortunate that a love of office too generally pervades the human breast, although it damages all those who take office.

Foreigners flying from European oppression are, by our Constitution, wisely framed by the founders of our liberty, invited to this happy land. Their children intermarry with ours, their bones are to bleach the same fields with ours. They have dug our canals, constructed

our railroads; they fill the ranks of our army, and have greatly aided, by their labor, in enriching our country. Are these boons to be considered as nothing worth? Would it be fair or just to deny to them the fulfillment of the conditions on which they left their homes and became willing to inhabit a foreign land among strangers, and to encounter the hazards of our climate? Would it be wise to have hundreds of thousands of hardy, industrious, enterprising men scattered over the whole nation in a state of proscription, who could be brought into action by one common principle, without any arrangement or co-operation, and who, to free themselves from these invidious marks of distinction, would be ready on the sounding of a single word, to give effect to a principle adverse to the common good? Far better will it be to consider all of the same family and all laboring for the same object.

POLITICAL PARTIES.

The New York Herald suggests that a brief sketch of the various political parties of the United States may not be uninteresting, particularly to those whose recollections do not extend beyond the formation of the present national parties, which have divided the people of the United States for the last twenty years.

"During the American revolution the only political parties known were those of whigs and tories—the former, comprising the great mass of the people, being favorable to the revolution; and the latter, few in number, calling themselves loyalists, were opposed to throwing off the yoke of the British government. After the war the tories mingled with the parties that were afterwards formed, some of them joining the federalists, and others becoming part of the republican or democratic party. The federal party arose on the formation of the Constitution of the United States by a convention of delegates at Philadelphia, in 1787. The adoption of the Constitution by the several States, in conventions of delegates called for that purpose, was carried, after severe contests, in some of the States, and nearly unanimously in others. The friends of the Constitution assumed the name of federalists, while its opponents were called anti-federalists; and that was the state of parties when the Constitution went into operation, in 1789. The national government, although one of deliberate consent, encountered from its formation a powerful opposition. Washington, John Adams, and Hamilton were at the head of the friends of the Constitution when the first administration was formed. In the first Congress there was a considerable number of members who had

opposed the adoption of the Constitution by their respective States. In addition to these there were some members who had supported the Constitution in the national and State conventions, but now, from various causes—principally, however, from a desire to sustain themselves in their own States or districts, where the Constitution was deemed unpopular—joined the opposition to the administration of Washington. Among these may be mentioned Mr. Madison, of Virginia; Mr. Langdon, of New Hampshire; Doctor Williamson, of North Carolina; Mr. Baldwin, of Georgia, and others. Thus was formed what was afterwards called the republican party, the name of anti-federalists being disavowed by those who declared themselves friendly to the Constitution. It should be noticed that this republican party was formed before Mr. Jefferson returned from France. The first session of the first Congress, which was held at New York, occupied nearly six months—from the early part of April to the 29th of September, 1789. Mr. Jefferson returned from a mission to France in November, 1789, and assumed the duties of Secretary of State in March, 1790, while the first Congress was holding its second session at New York, parties having been already formed at the previous session, and the opposition called republican, acting under the leadership of Mr. Madison. With this opposition party Mr. Jefferson immediately sympathized, from his dislike to the strong measures, tending to consolidation, recommended by Washington, Hamilton, and other leaders of the federal party. Mr. Jefferson did not hesitate to call the federal leaders monarchists, and hence acknowledged the propriety of denominating his own political friends—the opponents of Washington's administration—republicans.

"In the first Congress parties were nearly equally divided. The opposition elected John Langdon, of New Hampshire, President *pro tempore* of the Senate, and Frederick A. Muhlenberg, of Pennsylvania, Speaker of the House of Representatives; but they were chosen in the first part of the first session, when party lines were not strictly drawn. The Washington administration were enabled to carry all the important measures which they brought forward through both Houses of Congress.

"The federalists continued to call the opponents anti-federalists, by which they meant enemies to the Constitution, until the year 1793, when citizen Genet arrived in this country, as the ambassador from the French republic. The opposition to the administration of Washington warmly sympathized with the French republicans, and received Genet with open arms, although he sought to involve the United States in a war with Great Britain, and issued commissions to vessels of war to sail from American ports and cruise against the enemies of France. It appears to have been expected in France that the United States would engage

on its side from treaty stipulations or inclination, against England. Washington and his cabinet were of opinion that this country was not bound to take part in a war begun by France; and in April, 1793, the celebrated proclamation of neutrality by President Washington was issued, which has been the guide of the nation ever since in affairs with foreign nations.

"M. Genet was said to have introduced into this country the idea of 'democratic societies,' which were first formed in the United States about this time, in imitation of the Jacobin clubs in Paris. After the fall of Robespierre, these clubs or secret societies fell into disrepute both in France and America. From this time the federalists stigmatized their political opponents as 'Democrats,' but they always refused to acknowledge the name, and called themselves 'Republicans,' and their opponents 'Tories,' 'Monarchists,' or 'Aristocrats,' according to circumstances. Some of the violent federalists called their opponents 'Jacobins,' but the name never grew into general use. It is to be observed that Mr. Jefferson, in his writings, never used the name of 'democrat' as applied to his political friends, but uniformly calls them 'Republicans.' The federalists, however, always called them, in derision or otherwise, 'Democrats,' and these terms of 'Federalists,' 'Republicans,' and 'Democrats' continued in use until after the close of the war with Great Britain in 1815, and the election of Mr. Monroe to the presidency in 1816, when a revolution of the old parties generally took place, and what was called 'the era of good feelings' took place, and continued until the presidential election in 1824. We must here allude to the formation of various personal parties connected with the politics in several of the States after the election of Jefferson to the presidency in 1801. Parties arose in various States where the republican or democratic party were in the majority, but did not assume much importance anywhere except in the State of New York. In this State, Colonel Aaron Burr was the acknowledged leader of the republican party. In consequence of an equal vote between him and Jefferson, it became the duty of the House of Representatives in Congress, as the Constitution then stood, to decide which of the two republican candidates should be President. The federalists supported Burr, and the republicans voted for Jefferson; and, after a protracted contest, Jefferson was chosen President, and Burr, of course, was declared Vice President. This affair caused a division in the republican party of New York. George Clinton, De Witt Clinton, Judge Spencer, Morgan Lewis, the Livingstons, and other leading republicans entering the lists against the Vice President (Burr) and his friends. Parties were then called 'Clintonians' and 'Burrites;' and Burr, attempting to run for governor against Morgan

Lewis in 1804, was compelled to rely mainly on the federalists, for support. The consequence was the political prostration of Burr and the little band of republicans who supported him. Subsequently, the republicans fell out with Governor Lewis, but a few of his political friends adhered to him, and the federalists endeavored to sustain him; but he was easily prostrated by the superior popularity of Daniel D. Tompkins, who was then a young man, and judge of the Supreme Court. He was brought forward by the Clinton portion of the republican party, headed by De Witt Clinton and Judge Ambrose Spencer, and, it is a curious fact, that these same leaders were engaged years afterwards in a crusade against Tompkins—De Witt Clinton being the successful candidate against him for governor in 1820. In the contest of the republican party with Governor Lewis in 1807, the few republicans who adhered to the governor were called 'Lewisites.' The personal friends of Colonel Burr, who were always active in politics, retained the name of 'Burrites.'

"In 1812, De Witt Clinton was the favorite candidate of the republican party of New York for President, and he was nominated for that high office by a large majority of the republican members of the legislature. Mr. Madison, however, received the nomination of the caucus of the republican members of Congress at Washington, and war having been declared with Great Britain, Mr. Madison was considered the war candidate, and Mr. Clinton, who received the support of the federalists in this and other States, was called the peace party candidate. The friends of Clinton in this State were called 'Clintonians,' and his opponents 'Madisonians.' The success of Mr. Madison in his re-election to the presidency, and the triumph of the republican party generally, threw Mr. Clinton and his republican friends into a minority in this State. In 1817, however, in consequence of the election of Governor Tompkins to the vice presidency, Mr. Clinton was brought forward as the friend of the construction of the Erie and Champlain canals, and was consequently nominated and elected governor. Immediately after his election, an opposition was organized in the democratic ranks against him—this opposition being led by Martin Van Buren. A majority of the democracy of the city of New York joined in this opposition, and the party opposed to Clinton soon became known as 'bucktails,' the symbol of the Tammany society, which was the great focus of the democracy in this part of the State. The name 'bucktail' became one of general application to the opponents of Clinton throughout the State, while his friends, whether republicans or federalists, were called 'Clintonians.' The great mass of the old democratic party were opposed to Clinton, while the largest proportion of his supporters had been of the federal party.

"There were several local names applied to

the bucktail or democratic party in this city, such as 'Martling men,' from the name of the keeper of the democratic headquarters, &c. The term 'Coodies' was applied to the few federalists who joined the democrats during the war with Great Britain in 1812. Hugh Maxwell is a living representative of the 'Coodies,' a small party, which were remarkably fortunate in obtaining office at various times from the people, or by appointment.

"As time rolled on there was nothing remarkable to notice in the history of parties and party names, until the year 1823, when the presidential election approaching, Judge Ogden Edwards, of this city, in order to defeat Martin Van Buren, in a bargain he was supposed to have made to give the electoral votes of this State to the late William H. Crawford for President, started the idea of transferring the choice of electors from the legislature, who had previously chosen them, to the people. Hence arose 'the people's party,' so called, the leaders of which in the legislature of 1824 were Gen. James Tallmadge and Henry Wheaton. This party succeeded in giving most of the electoral votes of the State in 1824 to Adams, and in electing De Witt Clinton and James Tallmadge to the offices of governor and lieutenant governor. The election of Clinton ruined the people's party eventually, as a large portion of the party had been 'bucktails,' and opposed to Clinton in former years. To cap the climax, Clinton came out for Gen. Jackson for President, and of course threw the people's party into confusion. After re-electing him governor in 1826, with a legislature opposed to him, the people's party was broken up, some going for the re-election of Adams as President, and others for the election of Gen. Jackson. The Adams men were subsequently called 'national republicans;' but when joined by seceders from the Jackson ranks, in 1833 and 1834, they adopted the name of whigs. The 'anti-masonic' party arose in the western part of New York in 1827. It was founded on opposition to free masonry, and extended into most of the middle and eastern States. After an existence of ten or twelve years it gradually became merged in the whig party. In 1829 there was organized in the city of New York, and afterwards in Philadelphia, a party called the 'workingmen's party,' which at one time threatened to do great mischief to the Jackson democratic party; but the workingmen soon became divided, some of them going with Frances Wright and Robert Dale Owen for the adoption of the doctrines of the English infidels and radicals, and others co-operating with the national republicans or whigs. The workingmen's party became the basis of the 'loco focos' or 'equal rights party,' which was organized by the radical democracy at Tammany Hall, in October, 1835, at a meeting where loco loco matches were used to supply the place of the lights in the hall, which had been extinguished.

"When General Jackson was elected President, his supporters claimed the name of 'democrats,' which had been a term rejected by the republicans in Jefferson's and Madison's time. In the southern States some of the democracy became dissatisfied with Jackson's administration and took the name of 'State rights men,' some of whom joined the whigs, and others returned to the democratic party during Van Buren's administration. While Van Buren was President, the democrats who disapproved of the Sub-Treasury scheme were called 'conservatives,' many of whom joined the whig party and assisted in the election of Harrison and Tyler.

"About the year 1844, the democratic party in the State of New York became divided into two factions, which were severally called 'hunkers' and 'barnburners.' The hunkers were similar to the conservatives of 1838, and were favorable to banks and internal improvements. The barnburners were also called destructives and radicals, and generally opposed banks and other charters, and the increase of the debt of the State for internal improvements. These names have since got out of use, the terms free soilers and soft shells being applied to the barnburners and hunkers who have joined them, and the hunkers opposed to abolition and free soil movements being called hard shells.

"We have not space to follow up the history of parties in the various States. They have generally been unimportant in their effects on the politics of the nation. In Pennsylvania the democrats, for some years after the year 1815, were divided into old school and new school democrats—the former being similar to the Clintonians of New York, and the latter nearly like the bucktails of this State. These distinctions existed for some years, until parties became formed for and against Jackson, Van Buren, and other candidates for the Presidency.

"In Missouri, the parties which divided the people, some ten or twelve years since, were called hards and softs, the hards being in favor of a specie currency, and the latter in favor of banks. A similar division has often existed in Ohio.

"We have in a former article given an account of the rise, progress and decline of the various parties called Native American or American Republicans. The secret order of Know Nothings is more extensively organized and proscriptive than their predecessors, in their action against citizens of foreign birth and Catholics.

"There has recently been a new formation of parties in California, the democracy being divided between the supporters of David Broderick for United States senator, and those who oppose him; the latter are called the chivalry. At a recent State convention it appears that the chivalry section was much smaller than the Broderick wing, and therefore bolted, much

after the fashion of the New York hards at Syracuse last year. They passed resolutions endorsing Pierce and the Nebraska bill; while the Broderick men do neither. The temperance and Maine law organizations in various States are too well known to require explanation."

Mr. Barker's early course before the different courts of New York exhibited self possession, and a better knowledge of the intentions of the law than is generally found among laymen.

On one occasion he had an angry controversy with an insurance company, in which Messrs. Emmet and Coldin were concerned for the company. It came before Chancellor Lancing, who held his court in the old city hall, situated in Wall street. Mr. Barker, impatient at the delay which had been experienced, took the case into his own hands, closed his argument at 4 o'clock, p. m., on Friday, and at 10 o'clock on Saturday morning the chancellor rendered his decision, decreeing \$27,000 to Mr. Barker, which had been deposited in the court of chancery at Albany, by the insurance company, to enable it to procure an injunction restraining further proceedings at law. Mr. Barker dispatched an agent to Albany with the decree, and had the silver in his own house on the following Wednesday. It is believed that this was the only case decided by the chancellor at the same term he heard the argument, during the whole period of his chancellorship.

On another occasion, during Mr. Barker's absence, a default was entered for about \$10,000 in a suit against him for damages, alleged to have been sustained by his ship "Lady Madison" landing her cargo at London, she having been prevented from proceeding to a continental port by the Berlin and Milan decrees. On his return he requested his counsel to apply for a new trial; the time allowed for such application having expired, the counsel declined to make the application, saying it would be out of order and useless. Mr. Barker enquired if the Supreme Court had power to grant a new trial; the answer being in the affirmative, then, said he, if you will not apply, I will. He did so, obtained a new trial, and conducted the defence himself, which resulted in a judgment against him for \$2,500. Not satisfied with this, he applied for and obtained another trial, when a judg-

ment for only about \$1,000 was rendered against him; this he paid, in preference to further litigation, although he was confident that in the end the whole would have been annulled, had he thought proper to have continued the contest. It was in reference to this trial that Mr. Emmet said, at a dinner party, when enquired of by the judge how it happened that he allowed Mr. Barker to worry him so much, that he considered himself fencing with a left-handed man, and "therefore did not know how the blows would be aimed."

On another occasion, when the Exchange Bank was unable to meet punctually its engagements, a bill in chancery was filed, enjoining all his proceedings, of which he got notice at 2 o'clock, p. m. His impetuosity would not allow him to wait to receive a copy of the said bill from the officers of the court, in place of which, at his request, his solicitor, George W. Strong, esq., borrowed the original bill; Mr. Barker took it with him to his country seat, and, after having his dinner, segar, and accustomed nap, he drafted an answer, reviewing all his business transactions, ships, houses, stocks, merchandize, &c., and took it back to the city at daylight the following morning, returned the original to the clerk of the court, and placed his draft in the hands of the said solicitor, to be thrown into form and filed, which was done, comprising 80 folio pages; this answer underwent most searching investigation, was sustained in every particular, and the injunction dissolved.

Mr. Barker is now, and has been for more than ten years last past, conducting a suit in New Orleans in favor of William Broader York, late master of the British barque Aldebaran, against Richard H. Chilton, formerly of Liverpool, involving the question of a consul's authority to remove a ship master, and which has occasioned great acrimony. Mr. Barker was applied to by eight or ten masters of British vessels, to claim a restoration of Captain York's chronometer, which had been sequestered on the affidavit of Mr. Chilton, and to sustain Captain York in his command against the efforts of William Mure, the British consul, to displace him.

Mr. Barker declined to embark in the case, except for the restoration of the chronometer, until he could confer with Mr. Mure.

On the arrival of the barque at New Orleans the captain applied to the consul for permission to discharge James Scott, the mate, for neglect of duty and rebellious conduct, the British law not allowing him to do so without the permission of the consul; this permission being refused, some angry words ensued, when Captain York told the consul that he would discharge the mate whether he consented or not; this enraged the consul, and led to all the difficulties which ensued.

The mate had instituted legal proceedings against Captain York for an alleged debt of \$24; he obtained judgement, and made the following affidavit, in the hope of having him sent to prison:

THE STATE OF LOUISIANA—1032.

City Court of New Orleans. Personally appeared before me, George Y. Bright, one of the associate judges of the City Court of New Orleans, James Scott, who, being sworn, deposed and saith: That William B. York, master of the barque Aldebran, is justly indebted to him for judgment rendered and execution issued in the sum of twenty-four dollars and forty-four cents, and costs of suit No 1032 of the docket of this court; and that he verily believes that the said William B. York, as aforesaid, is about to depart permanently from the State, without leaving in it sufficient property to meet his demand; and that he does not take this oath with the intention of vexing the said Wm. B. York, as aforesaid, but only in order to secure his demand of twenty-four dollars and forty-four cents, and costs of suit for judgment rendered in this court on the 2d of April, 1844, in the cause entitled James Scott vs. Wm. B. York, &c. Wherefore, James Scott, the plaintiff, prays that an order of arrest (writ of bail) may issue against the said Wm. B. York, master of the ship Aldebaran.

JAMES SCOTT.

Sworn to and subscribed before me at the city of New Orleans, this 3d day of April, 1845.

GEORGE Y. BRIGHT,
*Associate Judge of the city of
New Orleans.*

*To the Marshal of the city of New Orleans,
Greeting:*

You are ordered to arrest and hold to bail the above named defendant, that he may answer to the action brought against him, for twenty-four dollars and forty-four cents, and costs of suit.

GEORGE Y. BRIGHT.
*Associate Judge of the city of
New Orleans.*

JAMES SCOTT } City Court, N. Orleans.
 vs. } Before Geo. Y. Bright,
 CAPT. WM. B. YORK. } Associate Judge.

Received, New Orleans, 3d April, 1845, of Captain Wm. B. York, the sum of thirty-five dollars and forty-four cents, in full—it being the amount of the above judgment.

Judgment	24 44	} P. JACOBS, <i>Marshal.</i>
Tax	2 00	
Taking testimony in writing	4 00	
Marshal's fees	5 00	

April 3, 1845. \$35 44

A severe tax this on defendant, for taking down the testimony of drunken sailors; who does your honor think instigated this, and for what purpose? Was it not with a view on which to found the charge which the defendant has urged on every trial, that on that trial Captain York swore false? The marshal's fees seem, also, very exorbitant; however, all were promptly paid by the plaintiff.

Return of the officer.—Not executed—the defendant having paid the amount of judgment, April 3, 1845.

P. JACOBS, *Deputy Marshal.*

The defendant embarked zealously against Captain York—invading his rights; for which a suit was brought against him for ten thousand dollars damages. The case has been several times before the Supreme Court of Louisiana; and the last jury gave a verdict for seven thousand five hundred dollars to plaintiff—with which the defendant being dissatisfied, asked a new trial. The question has been argued at great length on both sides. From a brief submitted to the court by Mr. Barker the following extracts are made:

The attempt to disgrace Captain York by an imprisonment failing, the consul, knowing that his office did not confer on him authority to displace him and appoint the rebellious mate, Scott, to the command, looks up young Chilton, the defendant, assuming that he was the authorized agent of the owner, who addresses letters to the plaintiff as follows:

APRIL 4, 1845.

SIR: Meet me at the British consul's tomorrow morning. Bring the officers of the ship and two of the boys with you.

Yours truly,

R. H. CHILTON.

Captain YORK.

NEW ORLEANS, April 5, 1845.

SIR: Her B. M. consul having this day placed Mr. Scott upon the register of the

Aldebaran, as master of said barque, you will please give up charge of said barque to him.

Yours truly,

R. H. CHILTON.

Captain YORK.

*Monday Evening,
 on board barque Aldebaran.*

SIR: Notwithstanding the consul's orders, I understand you have been on board this ship, interfering with Captain Scott in his duty. I have now to say that you will be allowed to come on board this vessel once more only, which will be to allow you to take your property, clothes, &c., out of her. After that you will not be allowed over the gangway. I have also to request that, as soon as possible, you will render me your accounts.

Yours truly,

R. H. CHILTON.

Mr. YORK.

These letters, without remark from me, sufficiently indicate how proud the defendant was to act as the instrument of H. B. Majesty's consul. He neither signs as agent or attorney for the owner, nor does he represent himself as such or make any complaint of the conduct of plaintiff in the discharge of his duties as ship-master. They put his action entirely on the ground of carrying out the will of the consul.

His next move was to make the following affidavit:

THOMAS HUNTER HOLDERNESS	} City Court.
vs.	
D. T. LILLY.	

Richard Harrison Chilton, agent for the plaintiff herein, being sworn, saith that D. T. Lilly, the defendant, has in his possession a chronometer, of the value of one hundred and fifty dollars, belonging to the plaintiff and owners of the barque Aldebaran, of which one ——— York was late master, and that he fears that said chronometer will be removed out of the jurisdiction of this court during the pendency of this suit, and that Lilly refuses to deliver possession of the same.

R. H. CHILTON, *Agent.*

Sworn to and subscribed before me, this 7th April, 1845.

O. P. JACKSON, *Judge.*

To which the plaintiff put in the following answer:

THOMAS HUNTER HOLDERNESS	} City Court.
vs.	
D. T. LILLY.	

Wm. Broader York, *Intervenor.*

The petition of said York represents that he is the owner of the chronometer in question;

that it was so far in his possession as to have been by him left with D. T. Lilly for repairs; that he be allowed to intervene in this cause; that he excepts to the right of R. H. Chilton to appear as agent for the owners of the barque *Aldebaran*, and demands proof of his authority to act for such owners, and prays for an order for the delivery of said chronometer to your petitioner; that the said Chilton be compelled to pay all costs, with fifty dollars damages. And in case this exception should be overruled, he denies all the allegations of the petitioner, insists that he is the commander of the said barque, and as such, their duly constituted agent, and prays that this suit be dismissed with costs and damages, and for general relief, and, as in duty bound, will ever pray.

JACOB BARKER,
Attorney for W. B. York.

Which suit was dismissed as follows :

The plaintiff discontinuing his suit against defendant, and intervenor not having complied with the requisitions of law in his intervention, it is ordered that the intervention fall also, it being understood that the intervenor is not deprived of the right to claim by separate suit.

O. P. JACKSON, *Judge.*

This decision entitles the plaintiff to recover damages in this suit without further proof.

The chronometer was seized under process issued on this affidavit, and removed from Mr. Lilly's, where, according to the universal custom of ship-masters, they deposited their nautical instruments, and placed with the plaintiff. The case was tried and not a word of testimony offered in support of the accusation; whether the chronometer belonged to the plaintiff or to the owner of the *Aldebaran* the allegation was equally libellous, as much so as to deprive a naval or army officer of his sword or epaulets by a false accusation.

Pending these proceedings the following correspondence took place between Mr. Barker and the consul :

NEW ORLEANS, *April 14, 1845.*

DEAR SIR: Captain York, commander of the barque "*Aldebaran*," has called upon me to aid him in restraining the interference of certain persons in the discharge of his duties as master of said vessel; and from a letter received by Captain York, from Mr. R. H. Chilton, you are referred to as authorizing the proceedings complained of.

The friendly relations which have always subsisted between us, induces me to notify you of Captain York's determination to apply to the courts of the United States to restrain all

interference with his authority as master of said vessel, and to redress the wrongs which he thinks have been done him—before I proceed to take out writs for the arrest of such trespassers as may be found on board, or such of the crew as may refuse obedience to his orders.

Should any other person than Captain York have authority to represent the owner of the vessel, I presume the whole affair can be amicably settled, the first step towards which will be the exhibition of such authority.

Very respectfully, your obedient servant,
JACOB BARKER.

WM. MURE, esq.,
*Consul of Her Britannic Majesty,
Victoria, Queen of Great Britain,
&c., &c., at New Orleans.*

BRITISH CONSULATE, NEW ORLEANS,
April 14, 1845.

DEAR SIR: I have received your letter of this date, relative to the British barque "*Aldebaran*," and notifying me that it is the intention of Captain York to apply to the courts of the United States to restore his authority as master of said vessel.

In reply thereto I have only to state, that in superseding Captain York in the command of this vessel, for irregularities in his conduct, and for violating the 46th and 47th sections of the navigation act, 7th and 8th Vic. cap. 112, by which he has been guilty of a misdemeanor, and is liable to fine and imprisonment, "I have acted with the sanction of the accredited agent of the owners in this port," and I must decline any further explanation regarding my authority, as her Majesty's consul, for dismissing, or sanctioning the dismissal of a British captain.

I am, dear sir, your most obedient servant,
WM. MURE,

Her Britannic Majesty's consul.
JACOB BARKER, esq.,
New Orleans.

NEW ORLEANS, *April 14, 1845.*

DEAR SIR: I have received your letter of this date. In reply to the allegation about Captain York "violating the 46th and 47th sections of the navigation act, 7th and 8th Vic., cap. 112, by which he has been guilty of a misdemeanor and is liable to fine and imprisonment," I have to remark that Captain York will be prepared to defend himself, whenever called to an account before a proper tribunal to pass on the matter.

As to his having been superseded, he does not admit that he has been, or that he can be superseded in the command of the *Aldebaran*, by any other authority than that from which he derived his command; to that authority he is prepared to submit; and if, as you say, you have acted with the sanction of the

accredited agent of the owner, it would seem to be incumbent on such agent of the owner to produce his authority; beyond which it is not my intention to ask for any explanation.

To prevent the possibility of a mistake, Captain York wishes you to be informed that his instructions are precise as to all the points of his duties; the observance of which disaffected a portion of his crew, in which instructions is to be found the following sentence:

"On arrival there, address the ship to Messrs. Gordon, Wylie & Co., who will have instructions respecting the loading of the vessel."

No intimation is given of any other agent, consequently he cannot recognize any other person as the accredited agent of his owner, without the production of credentials duly authenticated. Mr. Gordon states that he has not sanctioned any interference with his command; that he is not knowing to any irregularities on the part of Captain York; and that so far as he knows, he has performed his duties faithfully as commander of the *Aldebaran*.

I am, dear sir, your most obedient servant,
JACOB BARKER.

WM. MURE, esq.,
Her Britannic Majesty's consul, &c.

In place of producing authority, defendant's next move was to make affidavit in words following:

Personally appeared before me, G. W. Lewis, recorder municipality No. 3, of the city of New Orleans, acting as justice of the peace, duly commissioned and sworn, R. H. Chilton, who being duly sworn, does depose and say, that he is apprehensive and has strong reasons to believe and fear that W. B. York is about to commit a breach of the peace, by intruding himself and interfering with the command of the British ship "*Aldebaran*," of which deponent is the agent in this city. Deponent has cause to apprehend that said York will create a disturbance on board of said vessel, unless he be arrested and bound to keep the peace. Wherefore he prays that said York be arrested and dealt with according to law.

R. H. CHILTON.

DECISION OF THE COURT.

The being no just cause of apprehension of an intention on the part of the accused to commit a breach of the peace, proven in this case, the complaint is therefore dismissed, without prejudice to the rights of the parties.

G. W. LEWIS,
Recorder.

APRIL 19, 1845.

The imprisonment of Captain York, and the rejection of Mr. Barker's proposition to surrender the command on the production of authority, induced him to embark in the whole matter. The contest has been a very severe

one; during which the consul wrote a very exceptional letter to the Earl of Aberdeen, which the defendant produced in evidence in support of his action. The letter and Mr. Barker's criticism, herewith, will be read with deep interest by commercial and nautical men.

Captain York held command under the following agreement:

MEMORANDA OF AGREEMENT.

HULL, January 1.

That Wiliam Broader York goes out master of the *Aldebaran*, of Liverpool, and that his wages are to be eight pounds per month. The cabin to be found in all necessary stores by the owners, the nett cabin freight to be divided between the master and owners. The master to have one-third cabin passage money. The master also to find his own chronometer, having one guinea and a half per voyage allowed him in consideration thereof; he is also to be kept constantly insured from loss by the owners for forty pounds on his clothes and wages, to commence from the 16th of December, 1844. These conditions to remain in force so long as his services may be required, and no longer.

T. HOLDERNESS,
W. B. YORK.

SAILING ORDERS.

HULL, January 10, 1845.

SIR: You will proceed with the *Aldebaran* to New Orleans, making, of course, the best of your way, and on your arrival there, address the ship to Messrs. Gordon, Wylie & Co., who will have instructions respecting the loading of the vessel. We are informed that at this season of the year it is advisable to make to the southward as far as the latitude of Madeira, before you make much westing, especially if you can make good way to the south at the same time, and you keep edging to the westward. On your arrival, you will bear in mind that the house have the option of loading you for Hull or Liverpool, and when your ship has her ballast trimmed and your dunnage laid, you will send a notice to Gordon, Wylie, & Co., as per annexed, and you must copy it into your log-book, and note therein the day and hour you delivered it to them, and to whom it was delivered; and you will not fail to send us, per Halifax steamer, and also by packet ship by New York, the price current last published when you gave notice. You will inquire if there will be much weight, and of what kind, for your guidance in arranging your ballast for the most advantageous and proper stowage. Take care to preserve the cargo from damage as much as possible, by matting the masts, pump well, bitts, &c., and by putting old

boards in the sides of the ship. The freight of cotton is agreed for, but for the freight of other articles you will have to agree, and this must be your guide: If cotton freights per Liverpool, per price current, are three farthings per pound, flour must be six shillings per barrel; linseed cake, in bulk, three pounds per ton, and in casks ten shillings more; and hogs-heads of tobacco must be equal to ten barrels of flour; wet salted hides one shilling each, (not bundle,) and in the proportions, if cotton is higher or lower, per price current.

You will pay great attention to the pressing of the cotton, and if not done to your satisfaction, object to it; if a small gratuity to the foremen will get it better done, promise them it, but of course give nothing if slovenly done, and complain to the merchants, and say, as the ship pays for it you expect it to be done in the best possible manner.

Provision the ship for the homeward passage, that is, with beef and pork. But, as beef and pork will be moderate in England, you must see that the quality is such that it will keep, before you take any very large stock. Take care to keep your sails and rigging free from chafe, and as we know studding sails are often neglected, let them be well looked to as well as others. Let the provisions be served out in a proper manner, and let all have enough, but nothing must be wasted; in all things try and keep your expenses down. And do not be above asking advice from men of more experience.

If Gordon, Wylie & Co. have no articles of weight for you, apply to Mr. Peter Maxwell, who may have some; but you are allowed to take weight from other parties, namely: lead, lard, seed, or flour. Messrs. Gordon, Wylie, & Co. will supply you with what cash you require for ship's use; and disburse your own money and procure the largest discounts you can.

Many accidents have occurred by vessels getting foul of each other, which, in our opinion, in nine cases out of ten, is owing to want of a proper look-out; you will therefore insist on those who have charge of the watch, from time to time, that a proper look-out is kept, and no skulking allowed.

We again call your particular attention to not taking any wet bales of cotton; if you see any such, (and you must see every bale,) let them be laid aside, and call the attention of the house that ships them to their condition; and if they say they are in proper condition, and desire you to take them, get a written order to that effect; but if they refuse to give a written order, put in your log-book what passed, and note in the log-book their mark, and say how many of each mark are objected to, and sign such account at the time, as well as your mate; but we hope no such will be offered to you. From various attempts made to throw the damages on the ship, you must perceive

how necessary it is to be on guard against these things.

We understand that old "flat-boats" are to be purchased in New Orleans at a very low rate, and you must consult with Mr. Chilton as to the best method of procuring one at as little cost as possible, and with as little labor in breaking up, for the purpose of dunnaging the ship's sides, &c., &c.

We are, sir, yours respectfully,
HOLDERNESS & CHILTON.

Captain W. B. York,
of the barque Aldebaran.

A jury were empanelled and the cause came on for trial after strenuous efforts of the defendant to procure a postponement. The investigation and arguments occupied two full days, when it was submitted to the jury, who, after a short absence, returned a verdict for the plaintiff of seven thousand five hundred dollars, with which the defendant is dissatisfied, and now asks for a new trial. He complains that your honor erred in your charge to the jury. It cannot be expected that the plaintiff's counsel should undertake to defend or justify to yourself that charge. He will be prepared to sustain it when it comes before the Supreme Court. It was lucid, laconic, and to the point; a more discreet and appropriate charge could not have been delivered. The defendant was present and took no exception at it, further than to have the clause relating to the loss of the plaintiff's baggage varied, which your honor modified to the satisfaction of both parties. Your honor will recollect that this suit has been ten years pending, prosecuted with all the zeal and industry the plaintiff's counsel was capable of, at very great cost, labor, and inconvenience to the plaintiff, occasioned by numerous unfounded exceptions, rules, unsound pleas, and commissions to foreign countries never returned, for the purpose of driving the plaintiff out of court. To grant a new trial would be tantamount to refusing the plaintiff justice altogether, as he has no money wherewith to carry on another ten year siege. The case should be allowed to go to the Supreme Court, where it has in effect been already three times. That court is fully competent to examine the whole subject, and if there have been any error by your honor or by the jury, it can correct such error, and do justice to all parties without further trouble to this court, jurors, or witnesses, who have already, as your honor knows, devoted very much time to the investigation of this subject, and jurors certainly ought to be exempt from the penalty of being again locked up by day and by night in the jury room when there is no occasion for it. The Supreme Court said, in deciding in a former appeal, that it was the peculiar province of the jury to terminate questions of damages of this nature.

The defendant claimed a trial by jury before

his honor Judge Buchanan, also before your honor. The plaintiff on all occasions was anxious to relieve the jury from the consideration of such a complicated case, and proposed to have the case tried first by Judge Buchanan, and then by your honor, to which the defendant would not consent, insisting on a jury, and when one jury decided against him in a very moderate sum, he refused to allow it to go to the Supreme Court, demanded and obtained a new trial, which has taken place.

A more intelligent jury were probably never impanelled, and yet your honor is requested to interpose your judgment in opposition to theirs, vacating the same on the ground that your honor's judgment in the matter is superior to that of the jury.

So far from your honor entertaining an opinion at variance with that of the jury, I am persuaded your honor's judgment corresponds therewith. Your honor having twice heard and fully considered the testimony, cannot, I think, but approve of the decision.

To annul their proceedings, after all that has been said and done, written and published, would be likely to create a feeling of opposition between courts and juries, which the public good requires should be harmonious.

Again: increase the difficulties in obtaining satisfaction for personal wrongs through the courts of law, you encourage a resort to personal violence, which too often results fatally, as the records of our criminal courts of late furnish melancholy evidence. The damages are excessive, say the gentlemen, this involves an inquiry into the whole controversy.

This case is so fruitful of events, and the testimony so voluminous, that no counsel can do it justice in one day much less in one hour.

The plaintiff claimed \$10,000 on the following grounds:

1st. That the said defendant, under false pretences, caused to be sequestered a chronometer belonging to the plaintiff, thereby injuring his professional reputation.

2d. That said defendant interfered with plaintiff's authority as commander of said barque, and incited the crew of said vessel to disobedience, thereby causing petitioner great loss and trouble.

3d. That the said defendant caused the petitioner to be arrested and confined in prison, without any justifiable cause, thereby interfering with his business, causing him great loss, and injuring his reputation as a shipmaster.

4th. That the said defendant caused the said barque "Aldebaran" to be taken possession of by unfounded, malicious, and calumniating misrepresentations, to the great detriment of petitioner.

5th. That the defendant, aided and assisted by the British consul and others, got unlawful possession of the said barque under a false and void order, purporting to be from the United States district court, and put her to sea,

not permitting petitioner to remove his wearing apparel and other effects from said vessel, and that a portion of his effects was thus lost to him.

The various questions presented in this case to the consideration of this honorable court are of vast importance to all commercial and mercantile men, who do not care a rush for Captain York, Mr. Mure, Mr. Barker, or the owners of the Aldebaran, but they are shocked at the supposition that a consul, by virtue of his office, has power to dispossess their appointed agents in foreign countries of their property. Establish or sanction this pretence and no provident man would invest a dollar in a vessel bound on any foreign voyage.

The most wealthy merchant would be exposed to ruin by acts of irresponsible consuls, over whom they would not have any control, and in the selection or appointment of whom they have no voice; and if a British consul has that power, an American and all other consuls would have it. A great number of persons are selected for such offices who would not be trusted at home with a single hundred dollars. On the trial of this cause in 1854, the consul testified as follows: "I am the British consul for the port of New Orleans. I removed Captain York from the command; in doing so I acted in my official capacity according to law. I have had four or five times occasion to displace captains of vessels for bad conduct. I did so in my capacity as consul."

The evil of establishing such a principle must be too apparent to receive the sanction of any court of law in the United States, or to require remark from me.

I assume that neither the President of the United States, with or without the advice of the Senate and his cabinet ministers, nor the Queen of England, with or without the advice of the whole ministry, could legally remove a commander of a private ship; that they could not confer on a consul powers they did not possess themselves; that a consul is a mere commercial agent, with powers regulated by provisions of law, and that if he wishes to establish his authority, be it what it may, he must produce the law upon which he relies.

That an owner of a ship has full authority to remove the commander, with, or without cause; that his authority in no-wise justified false imprisonment, slander, or the sequestration of baggage and nautical instruments without process from a court.

That the power to remove must exist or be established before an inquiry can be made whether or not there was cause for removing a commander in lawful possession; that an agent claiming authority to remove a commander is bound to produce his authority before such commander is under any obligation to respect it.

That a subsequent ratification cannot oper-

ate to the prejudice of third parties, and especially not if made on a false representation.

That all parties who attempt to establish a point or position are bound to produce the best testimony the case is capable of.

That the contents of a written paper cannot be proved by oral testimony until the loss of the original is established, and not then without the production of verified copies, if obtainable.

That verbal authority could not regulate or control written or positive instructions, and if it could, the verbal authority must have been given subsequent to such written instructions.

That the rights of the parties must be decided on the facts as they existed at the time this suit was commenced.

That hearsay testimony, except what may have been said by the parties is inadmissible.

That a ratification on a false representation is void; that a ratification, no matter under what circumstances given, could not by any possibility impair the *vested* rights of a third party. In the admiralty suit his honor Judge McCaleb said a consul was a mere commercial agent.

The plaintiff's testimony fully establishes all the allegations set forth in the petition.

So far as I understand the defendant, he relies on the plea that the plaintiff was deprived of the command of the *Aldebaran* by the British consul. That consuls, by virtue of their office, are authorized to remove ship-masters, for what they may consider cause; that he was the duly authorized agent of the owner; that his action was without malice, and that the action of the consul and of the defendant were approved and ratified by the owner of the *Aldebaran*, and that of the consul by his government.

The consul's representations to his government are proved to have been false throughout. The representations of defendant to the justice's court, to the recorder's court and to the United States court having been false, the legal presumption is, that his representations to Messrs. Holderness & Chilton were false, his letter of the 10th April, 1845, sent by the consul to the Earl of Aberdeen, was calculated to mislead.

Those representations being unfounded, any ratification thereon, whether from the government, the owner of the *Aldebaran*, or others, would, if otherwise available, be valueless.

The defendant insists that it was the consul, and not the defendant who deprived the plaintiff of the possession of the ship.

The plaintiff insists that the consul did not and could not remove him; that two weeks subsequent to the consul's attempt to place Scott in command, he and the defendant recognized the plaintiff in command, and gave permission to remove the rebellious mate "Scott." In proof of this, plaintiff refers to Mr. Barker's correspondence with the consul, and to the consul's correspondence with plaintiff.

During the proceedings before the recorder's court, Mr. Barker negotiated a compromise with the parties, as will be seen by the following correspondence.

NEW ORLEANS, *April 18, 1845.*

DEAR SIR: You having satisfied me that I was in error in supposing that I could discharge the mate of the barque *Aldebaran*, under my command, without the consent of Her Britannic Majesty's consul, I have again to request your consent to my discharging Mr. Scott, chief mate of said vessel, for reasons heretofore assigned to you, and because I do not think that harmony could prevail on the homeward voyage if he should be continued.

The error of opinion under which I was laboring on the subject led me, when you refused your consent, to the use of intemperate expressions to you, near the post-office, which expressions I withdraw, and regret having made use of them.

Your obedient servant,

WM. B. YORK,

Master of the barque Aldebaran.

WILLIAM MURE, esq.,

Her Britannic Majesty's consul.

BRITISH CONSULATE, NEW ORLEANS,
April 21, 1845.

SIR: I have received your letter of the 18th inst., in which you have expressed regret for certain intemperate expressions made use of towards me, in reference to my refusal to consent to the discharge of the mate of the *Aldebaran*; I have merely to say that I accept the apology tendered, which, however, was unnecessary, as I do not permit my private feelings to influence my public duties.

In regard to my consent to your now discharging the mate, I can only agree to your doing so, upon the understanding that this is not to compromise or prejudice any proceedings which may be taken by him or others in the courts of law in England.

I am, sir, yours, &c.,

WM. MURE,

Her Britannic Majesty's consul.

Captain W. B. YORK.

BRITISH CONSULATE, NEW ORLEANS,
April 21, 1845.

SIR: In handing you the inclosed letter, I have only to state that I act in this matter passively, having no desire that the interests of the owners of the barque or the charterers should suffer by delay, in offering opposition to a jurisdiction over my consular duties, by tribunals whose power, in this matter, I cannot acknowledge.

The best course for you to pursue is, to lay

the whole matter before the owners on your arrival in England.

I am, sir, yours, &c.,

WM. MURE,
Her Britannic Majesty's consul.

The plaintiff insists that he was not deprived of the command of the Aldebaran until the evening of the 28th April, 1845, when the defendant took her from the possession of the United States marshal's keeper, on a false order from the clerk of the federal court.

The Aldebaran had been libelled in the United States court by R. H. Chilton, representing her to belong to Thomas Hunter Holderness, of Liverpool, and that he was the duly authorized agent of the said Holderness, in which libel suit the consul united. A rule was taken to deprive plaintiff of the possession and to deliver the Aldebaran to the said Thomas Hunter Holderness on his giving security. This rule, after a severe contest, was on Friday, the 25th April, 1845, dismissed, the court saying that he had not established either the ownership or agency; whereupon the counsel for libellant asked a re-hearing on the ground that he was taken by surprise, inasmuch as he had supposed for the purposes of the rule the allegation in the libel would be taken for true. The counsel should have known that in neither the court of chancery or the admiralty court could a party claiming be put in possession without proof, his allegations can only be taken for true so far as to authorize an injunction or sequestration.

The re-hearing was granted to take place the following week.

In place of waiting for a re-hearing the defendant and the consul resolved to take off the Aldebaran by force, had a steamboat alongside of the ship and made the other necessary arrangements, when being foiled in their attempt to take her off while the suit was pending, they employed more lawyers, and on Wednesday evening William Mure, John Winthrop and John Claiborne repaired to the residence of Judge McCaleb, and obtained an order for the discontinuance of the suit on payment of the costs, as follows:

"The proctor for libellant in this case has asked for an order to discontinue the libel; 'as there seems to be no reason why this order should not be granted, the clerk will enter an order to that effect, upon the payment of costs.'"

CLERK'S OFFICE, *April 29, 1845.*

I hereby certify that the above are true and correct extracts from the minutes,

N. R. JENNINGS.

On receiving the above a most extraordinary scene took place at the office of the clerk of the court, when he was induced to issue the following order, without reading it, which was drawn up by one of these lawyers:

UNITED STATES OF AMERICA,

EASTERN DISTRICT OF LOUISIANA.

The President of the United States of America, to the Marshal of the Eastern District of Louisiana, or his lawful deputy, greeting:

WHEREAS, in the district court of the United States, in and for the eastern district of Louisiana, the judge has this day issued the following order, to wit: Holderness *vs.* The barque Aldebaran, the proctor for libellant in this case has asked for an order to discontinue the libel, as there seems to be no reason why this order should not be granted, the clerk will enter an order to that effect, upon payment of costs; under this order of the court, the barque Aldebaran, libeled by Thomas Hunter Holderness, has been released from seizure, according to law, and the costs of suit up to this date having been paid, you are hereby commanded, conformably to law, and the order of the said court, to cause the said barque Aldebaran to be delivered to the said Thomas H. Holderness, or his agent, and hereon make return.

Witness, the Hon. Theo. H. McCaleb, judge of the said court, at New Orleans, this 28th day of April, A. D. 1845, and sixty-ninth year of the Independence of the United States of America.

N. R. JENNINGS, *Clerk.*

The counsel for York, considering the cause at rest for some days, left the city on Saturday evening to visit his son then very sick on the coast; returning on Tuesday morning, found the Aldebaran had been taken off; he repaired to the United States district court, examined the documents, and inquired of his honor, Judge McCaleb, if he had authorized such an order as the clerk had issued under the great seal of the United States. The judge replied that he had not, and advised that a rule be taken on the parties, requiring them to explain. This was done, and the following rule granted:

THOMAS HUNTER HOLDERNESSE <i>vs.</i> THE BRITISH BARQUE ALDEBARAN.	}	District court of the United States for the district of Louisiana, May 2, 1845.
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On the application of Jacob Barker, of New Orleans, herein appearing as "amicus curiæ," it is on filing the deposition of William Broader York, ordered that a rule be granted commanding N. R. Jennings, the clerk of this court, to appear on the seventh day of May, instant, at one o'clock, a. m., to answer a contempt of this court for issuing improperly, and causing the seals of the court to be affixed thereto, an order in contravention to law, and the authority possessed by said clerk, for the

delivery of the British barque *Aldebaran* under seizure, and in the charge of the marshal of the United States, to Thomas H. Holderness, or his agent, without any authority for so doing, and in contempt of this court.

And also, at the same time and place, that Richard Harrison Chilton, William Mure, John Winthrop, and John Claiborne be also commanded to appear and answer a contempt of this court in aiding and procuring said order of said clerk, and in interfering with the orders of this court by causing the said barque to be removed beyond the jurisdiction of this court, as set forth in the said affidavit of William B. York.

The following testimony of the clerk of the United States court, and R. M. Carter, the defendant's attorney, tells the tale, and their next move:

HOLDERNESS, &c., <i>vs.</i> THE BARQUE ALDEBARAN. RULE, <i>vs.</i> THE CLERK, &c., &c.	} To the honorable judge of the district court of the United States for the State of Louisiana.
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The clerk of this court, in answer to the rule taken in the above entitled case, admits that an order as stated in the rule issued from his office under his signature and the seal of the court, but utterly denies the charge as alleged of being guilty of a contempt of court for issuing an illegal order. Whatever was done by this respondent was under the sincere belief and conviction that he was doing no more than his duty as clerk of this court, and he begs leave, in further reply, to state the following circumstances, going to show that if any error was committed by him, it was simply an error of judgment.

On the evening of the 28th ult. Messrs. Winthrop & Claiborne, accompanied by Mr. Mure, the English consul, came into respondent's office with a written order from the judge of this court in the following words: "The proctor for the libellants in this case have asked for an order to discontinue the libel, as there seems to be no reason why the order should not be granted, the clerk will enter an order to that effect upon the payment of costs." This order was handed respondent by Mr. Winthrop, who requested that he would, in conformity thereto, enter up an order of discontinuance, and issue to the marshal a writ of release of the barque *Aldebaran*. This respondent refused to do so, stating that he would give only a copy of the order of the judge, under the certificate and seal of the court. Mr. Winthrop then said that such a document could be of no service, and in a peremptory manner asked the respondent if he understood him in the presence of these gentlemen as refusing to follow the directions of the judge by not giving such an order under the seal of the

court, as the judge directed, observing further that he had already had trouble enough in this business, and the parties had been subjected to great expense. The respondent then, becoming considerably excited, and thinking, perhaps, he was assuming a greater responsibility than he ought in refusing to issue a writ of release, observed to Mr. Winthrop that he did not refuse to obey the order of the court, but that he considered his tone and manner unnecessarily captious, and that he would not suffer himself to be dictated to in his office. Mr. Winthrop disclaimed all such disposition, saying that he wished only to have the order of the judge carried into effect. Mr. Claiborne then, perceiving that we both were much excited, came forward and said that he could very easily explain the matter and prevent all difficulty, as he was present when Mr. Winthrop called upon the judge, and understood perfectly what his order intended to embrace. Mr. Winthrop, in the mean time, had asked one of the clerks in my office for a blank order of release, which being brought to him, he observed that in it would be expressed the proper order to send to the marshal under the seal of the court; still somewhat doubtful as to the course, and continuing not a little excited, this respondent requested either Mr. Claiborne or Mr. Winthrop (as he thinks) to draw up the order themselves. Mr. Claiborne agreed then to draw it up, or to fill up the blanks in such a manner as to conform with the order of the court as he understood it. He then drew up the order, which I think at the time was read over by Mr. Winthrop, (in this, however, I may be mistaken,) it was then read aloud by Mr. Claiborne, who observed that that was the order of the judge. I then read it over rather hastily, only looking particularly to that part of it reciting the written order of the judge, and perceiving it to be correct, affixed my signature and the seal of the court thereto.

N. R. JENNINGS, *Clerk*.

MAY 7, 1845.

NEW ORLEANS, April 28, 1845.

Received from J. P. Walden, esq., in conformity with the within order of court, the barque *Aldebaran* and cargo.

Costs in full to be paid to the marshal.

Sixteen dollars paid men.

R. H. CHILTON, *Agent*.

All costs, as charged by the marshal, to be paid by J. Winthrop.

R. M. CARTER.

This false and fraudulent order was obtained by Chilton's counsel, accompanied by another lawyer and the consul, repairing to the office of the clerk of the United States court, who, refusing to give the order they demanded, involved him in such a discussion as must have

deprived him of his reason, as he allowed them to draw the order complained of, and on one of the lawyers, telling him "that is what the judge ordered," (his excitement continuing,) signs it without reading it, attaching to it the great seal of the United States, and delivers it to the defendant's attorney.

For this order the defendant, with yet another lawyer, was waiting at the steamboat office; and as soon as obtained, proceeded to the Aldebaran, and presented it to the deputy marshal, as set forth in the testimony of Carter, who pointed out to him that Chilton was the person to whom the ship was to be delivered, and she was accordingly delivered to him.

Had the clerk appellate power over the court, he could not have gone further after hearing the argument, and yet it was done *ex parte*, and in the evening; and further, he transfers to the marshal the power to decide who the agent of the owner was, and in the absence of the marshal the deputy undertakes to exert the power thus conferred by the clerk on the marshal, and absolutely delivers the vessel and cargo to Mr. Chilton, taking his receipt as agent, although the court had two days before decreed that he had not established his agency or the ownership of the vessel, and could not have the vessel on giving bond with security. Thus we have a strange anomaly presented, not only a clerk of the court, but a deputy marshal, reversing, *ex parte*, the decision of the court, and without its knowledge delivering to irresponsible persons the whole property, worth near one hundred thousand dollars, who sent it beyond the jurisdiction of the court before the rising of the sun on the following day, and before the court assembled, or could get knowledge of what had been done, announcing in the morning newspapers their exploit.

No one would believe that any foreigner would dare thus to trample on your laws, and insult your ministers of justice, had not the testimony elicited on the trial established all, and more than all, charged in the petition.

Suppose the plaintiff had been wasting the property, and the whole going to ruin, would not the consul have had power to take possession, asks the counsel. I say no; our courts are established for that power, and the consul has the same remedy that every other man, citizen or alien, has, and no more, which is to invoke the conservative power of the court. In all such cases our courts grant prompt relief by placing suitable guardians over the property in danger. In this case all the testimony goes to prove that the ship was in the finest order, and Mr. Gordon, the consignee, testified that the plaintiff had not drawn any unreasonable sums of money, that he had never seen him drunk, and had no complaint to make against him. This whole difficulty has grown out of the contempt the consul had for our laws, our courts, and our

public officers, disputing from the first the jurisdiction, and defying their authority, and in this he embarked young Chilton.

RULE FOR CONTEMPT OF COURT.

Richard H. Chinn, esq., appeared on behalf of Richard H. Chilton, reading his answer:

Mr. Chinn insisted that the suit having been discontinued, the cause was out of court; that its power to punish for contempt was confined to the officers of the court, and to acts committed by others in the presence or immediate neighborhood of the court, and that there was a special provision in the act of Congress regulating proceedings in case of interference with the marshal elsewhere in the performance of his duties; which was by indictment by the grand jury, and trial after such indictment for a criminal offence; and he supported this doctrine by alluding to the act of Congress passed 2d March, 1831, which provides—

SEC. 1. *Be it enacted, &c.*, That the power of the several courts of the United States to issue attachments and inflict summary punishments for contempt of court, shall not be considered to extend to any cases except the misbehavior of any person or persons in the presence of the said courts, or so near thereto as to obstruct the administration of justice, the misbehavior of any of the officers of said courts, party, juror, witness, or any other person or persons, to any lawful suit, process, order, rule decree, or command of said courts.

SEC. 2. That if any person or persons shall, corruptly, or by threats or force, endeavor to influence, intimidate, or impede any juror, witness, or officer in any court of the United States in the discharge of his duty, or shall corruptly, or by threats or force, obstruct or impede, or endeavor to obstruct or impede the due administration of justice therein, every person or persons so offending shall be liable to prosecution therefor by indictment, and shall, on conviction thereof, be punished by fine not exceeding five hundred dollars, or by imprisonment not exceeding three months, or both, according to the nature and aggravation of the offence. This law was passed on 30th April, 1790. Section 23. See Engersoll's Abridgement, page 494.

By the following proceedings in the United States court, it will be perceived that the Hon. Judge McCaleb excused these men from contempt, on their own affidavits that they did not mean any contempt of the court. It was lucky for them that I was not judge. Had I been, the clerk should have been dismissed, and the whole of them imprisoned and punished to the extent of the law.

THOMAS H. HOLDERNESS, ET AL.	} U. S. District Court.
vs.	
THE BRITISH BARK ALDEBARAN.	} May 19, 1845.

The rule taken in this cause, as continued from the 7th instant, against the clerk and

others, to show cause why they should not be punished for a contempt, came on this day for trial, and the following parties, defendants, appeared :

John Winthrop and John Claiborne in *pro-pria persona* presented their answer, duly sworn to, which was ordered to be filed.

N. R. Jennings, represented by R. N. Ogden, esq., William Mure, represented by William Christy, and R. H. Chilton, by A. H. Chinn, esq., all of whom presented their answers, duly sworn to, which were accordingly filed. The argument of the parties and their counsel being heard, the court, having considered the answers of defendants, was satisfied that no contempt of court was intended by the defendants. Therefore, the rule is dismissed, reserving to the parties all the rights in civil action, if any wrong has been done, to which they may be entitled.

THEO. H. MCCAULEY.

In the case of the chronometer, the defendant himself determined to remove it beyond the jurisdiction of the court, and swore that he had good reason to believe that the chronometer would be removed beyond the jurisdiction of the court, meaning that it would be removed by plaintiff.

No loss proved, said the counsel. Does he consider the loss of one-third of the cabin passage money of a ship of 600 tons nothing? Does he consider the loss of one-half the cabin freight of such a ship nothing? Does he consider the loss of all the other perquisites nothing? Does he consider the loss of employment nothing? Does he consider the loss of professional reputation nothing? Does he consider having his trunks broken open and rifled of their contents nothing? Does he consider the expense of the prosecution of the various suits nothing? The successful defence of those suits justifies his having defended them, and the result of the employment of able counsel; and was it not the illegal acts of the defendant that involved him in this expensive litigation? and do not the laws of Louisiana say that "He who does another an injury shall be liable to such other for such injury?" He had to procure professional assistance in the defence, and had the aid of Mr. Latour, Judge Lacy, Judge Bullard, Mr. Soule, Mr. Frost, Mr. Gaither, and Mr. Barker; and the supreme court say he is bound to pay his counsel; and what estimate does the gentleman put on the value of their services in such a protracted litigation, when he says five hundred dollars was the most the jury should have allowed?

My friend Roselius wished me to discuss with him sundry law authorities; preferring to deal in facts I left that field with himself, in which he has been so justly conspicuous. Confiding in your honor's knowledge of the law, I did not think either of us could enlighten you thereon. Besides, all the time of the court which was proper for me to use on

the occasion was required in bringing to its view matters having a direct bearing on the issue.

I was very sorry that I could not remain in court during his four hours' display. I am always delighted when listening to the eloquence of that giant in the legal profession. My other engagements imperiously demanded my attention elsewhere, and I was compelled to make the sacrifice. He dwelt at length on my want of consideration for his law authorities.

My friend should have remembered that it was little David who slew Goliath.

No malice, say the gentlemen. What said the Supreme Court in the case of *Barker vs. York, et als.*? I beg leave to refer your honor, for its opinion, to 3d Ann., p. 90. That court said :

"The relations of counsel and client are too sacred, too confidential, too important, to be endangered by the presence of any adverse interest. The plaintiff was employed by York, who is bound to pay him. In the *relentless* war carried on against him by Chilton, York threw himself upon his legal rights. His interests, to say nothing of his passions, required that he should be reinstated or maintained in the command of the barque. But the defendant's interests? In respect to them, we only feel ourselves called upon to say, that they were not identical with those which were avowedly maintained on behalf of York; indeed, under a full view of the critical and embarrassing circumstances with which those interests were surrounded, we consider them to have been in conflict with the course which York felt himself at liberty to adopt for the protection of what he considered to be his legal rights."

Has not this *relentless* war continued down to the present day? Was there no motive in insisting on putting in that vile letter from the consul to the Earl of Aberdeen? The pretence that the plaintiff had originally called for this letter, was not any excuse for introducing it a second and third time, after its contents were known.

It was claimed that the consul's conduct had been approved by his government. It was impossible to know how to estimate such approval, without knowing on what representation it had been made. To meet this objection, the consul's letter was originally produced. Its introduction as testimony has ever since been strenuously resisted by plaintiff. Was there no malice in introducing it on this trial? Was there no malice in the defendant reading it himself to the jury, adopting and confirming all the relations of the drunken sailors, (hearsay testimony,) detailed by the consul, as also all the consul had said in that letter? Your honor heard him tell the jury, after reading to them the letter and the consul's testimony, that it contained the whole case. And you heard him, after reading the

record in Scott's suit, say to the jury, that after Scott had got judgment against York, the *scamp* would not pay, when the record proved that he had promptly paid, and, no doubt, before leaving court.

What were the facts? The vessel, with the nautical instruments, charts and baggage of the captain, was, in effect, although not in the legal possession of Scott and his drunken witnesses, from which he knew the \$24, for which he had obtained judgment, could be instantly made on an execution, with which the officer might have accompanied him to the barque, there found ten times the amount due. Hence no truth in the averment that "said Wm. B. York is about to depart permanently from the State without leaving in it sufficient property to satisfy his demand, and that he does not take this oath with the intention of vexing said Wm. B. York, but only in order to secure his demand." The object of which was to imprison and disgrace Captain York, in which he was disappointed, by the payment of the money before the writ of arrest was executed, as the record produced in evidence by the defendant proves.

The counsel for the defendant says the action of defendant was without malice, and endeavors to establish it by asking the opinion of his partner and of his lawyer. Was there ever such improper testimony before offered in any court? It is the opinion of the jury, made up, under the obligation of their respective oaths, from the facts proven in the case, and the testimony which is to govern your honor's decision, and not the opinion of outsiders. Your honor, on the former trial, heard the counsel for the defendant justify the breaking open and robbing of the trunks of the plaintiff, by Scott, to pay himself a debt which he said was due him by the plaintiff, which, said the counsel, he had a moral although not a legal right to do. He said this to the jury, knowing that all accounts between Scott and York had been litigated in the said suit, and resulted in a judgment in favor of Scott for all he claimed, and which had been promptly paid. Was there no malice in this? What better evidence can there be than continuing to dispute that the chronometer belonged to plaintiff? Your honor heard what the counsel on the former trial said about the plaintiff having gone to Mexico to purchase stock for the California market, and about his boarding at the house of a colored woman. I will not repeat what I know your honor must recollect. Was there no malice in this? Was there no malice in attempting to swear away the plaintiff's character as a ship-master? Is there not malice in the continued attempts to impugn the character of plaintiff? Is there not malice in the unprovoked assaults on the counsel of plaintiff, evidently to drive him from sustaining the plaintiff's cause? What possible object could there have been for the oath by which the chronometer was

wrested from the possession of plaintiff other than to wound the feelings and injure the reputation of the plaintiff? It was not necessary to preserve the discipline of the ship or for the dispatch of business. No dispute or question had arisen as to its ownership; no attempt to misuse it or to remove it from its proper resting place, its value too insignificant to have induced any such a harsh step to protect the property from theft.

Was there no malice in writing scandalous rhymes with the view of inducing counsel to abandon plaintiff's cause, disparaging Captain York as a ship master? Neither Mr. Barker's innocent grand children, in their infancy, nor his back parlor escaped the assaults of defendant, and yet your honor is asked to believe all was done without malice! Those scandalous rhymes were not made a part of the pleading, therefore not allowed in evidence, yet, as your honor was furnished by defendant during the former trial with a printed copy, your honor knows their import.

The defendant might as well attempt to disenfranchise himself from his other sins, without repentance, as to establish that every step he has taken since he first embarked has not been malicious—has not been from a determination to triumph at the expense of faith, honor, truth, and the rights of all others.

Infatuated with the doctrine that the king could do no wrong—hence that the queen could do no wrong, and that, as a matter of course, her consul could do no wrong, for Mure was a Scotchman, and Scott was a Scotchman, and therefore to be sustained, right or wrong, they resolved to set all your laws, your courts, your public officers, and your private citizens at defiance. These men must be taught that they cannot do so in these United States, so long as the stars and stripes wave over her halls of justice.

The counsel for defendant denied the imprisonment charged in the petition, and said that the plaintiff had been twice arrested and imprisoned on other charges by Scott, for drunkenness and disorderly conduct. He must have been instructed by defendant to say so, as there is not a word in the testimony to justify such an allegation; no such complaints were ever made against the plaintiff, nor did any such arrests take place; if it had been otherwise, would it not have been the duty of defendant to have produced proofs from the public records in support of the charge, or some other evidence of the arrest or imprisonment? They brought into this court the record of the suit of Scott vs. York, for the purpose of impeaching the oath of plaintiff because drunken sailors had sworn differently; the record did not furnish any such testimony, to supply which the officer was examined. The record should have been considered to contain the whole case.

I would ask if there was no malice in this? Mr. Mure, in his dispatch to Lord Aberdeen,

complains that Mr. Barker said the ratification by the owner was obtained on his (Mure's) *ex-parte* representation. Whether the representation was made by Mure or Chilton, is a mere matter of moonshine; they were so intimately connected in every stage of the business, that no one will suppose that either acted without the privity and approbation of the other. Mr. Mure does not say that Chilton did not apply for the ratification, at his instance, or on his statement of facts; all he says is, that his first letter was dated on the 3d of May, therefore that no letter could have been read from him until a fortnight after the ratification. That the application was *ex-parte* is certain; and, judging from Mr. Mure's statement to Lord Aberdeen, such statement must have been a most extraordinary affair, which we have not as yet been permitted to see.

A certain pamphlet, said to have been circulated by Mr. Barker, was made a matter of great complaint by Mr. Mure, in his testimony and in his dispatch to Lord Aberdeen, and is referred to in his lordship's dispatch. Why did not the gentleman produce the pamphlet and allow the jury to form an opinion for themselves thereon?

The British government did not consider the pamphlets of any importance, and refused to enter into any investigation of the consul's conduct, telling Captain York that he had not made any distinct charges against him.

—
"Captain York's complaint to the British government.

"NEW ORLEANS, May 20, 1845.

"HONORED SIR: Will your lordship be pleased to peruse the accompanying pamphlet, touching the conduct of Wm. Mure, esq., her Britannic Majesty's consul at New Orleans, to the end that if his conduct therein should not be approved by the authorities at home, he be removed from office?

"I, as a native born subject of her Majesty, late commander of a barque sailing under her royal colors, and owned by her faithful subjects, respectfully ask an inquiry into this matter as an act of justice.

"The original letters from Mr. Mure and Mr. Chilton as her Majesty's subjects, of which copies are put forth in the pamphlet of Mr. Stringer, of this place, are in my possession, ready to be produced if their authenticity should be disputed.

"I have, &c.,

"W. B. YORK,
*Late master of the British barque
 Aldebaran, of Liverpool.*"

—
"Reply of the British government.

"FOREIGN OFFICE, June 24, 1845.

"SIR: I am directed by the Earl of Aberdeen to acknowledge the receipt of a letter ad-

ressed by you to Sir Robert Peel, dated the 20th ultimo, requesting that an inquiry be made into the conduct of Mr. Mure, her Majesty's consul at New Orleans, and that, if his conduct be not approved, he may be removed from office; and I am to state to you, in reply, that as no distinct charge is made by you against Mr. Mure, Lord Aberdeen is not able to enter into an investigation of the merits of your complaint, and that the pamphlet which you inclose does not appear to call for any notice from his lordship.

"I am to add that no complaint has been made to Lord Aberdeen against Mr. Consul Mure by the owners either of the 'Aldebaran' or of the cargo.

"I am, sir, your most obedient, humble servant,

"CANNING."

The plaintiff has done everything in his power to expedite the proceedings in this case; he has not taken out any foreign commission. When the peremptory exceptions were filed in the case of Barker *vs.* York and others, he agreed that the decision in that case should govern this. When that case was appealed, he agreed to suspend this suit until that was decided, and that whatever points of law should be thereby established, should be applicable to this suit. He also agreed that all the evidence in the case of Barker *vs.* York should be used in this case. He never demanded a jury; the defendant originally demanded a jury, which he on a subsequent trial waived. When the plaintiff urged his honor Judge Buchanan to try the case without a jury, the Supreme Court having said that it was a fit case to be determined by a jury, "whose peculiar province it is to terminate questions of damages of this nature," the judge required there should be a jury. The defendants refused to advance the fees; to obtain a trial, the plaintiff had to do so. The jury were empannelled. At the close of the testimony, his honor, the judge, charged, among other things, that if the plaintiff had not made out all the points of his complaint against the defendant, the verdict must be for the defendant. Notwithstanding this, as I consider, erroneous doctrine, the jury found for the plaintiff.

The defendant demanded and obtained a decree for a new trial. Before it could take place, his honor, Judge Buchanan, was elevated to the Supreme Court, when your honor was elected by your fellow-citizens to fill the vacancy; and when the case was called in the court calendar, the defendant's counsel, to gain time, renewed their application for a jury, which was resisted by the plaintiff, on the ground that a former application for a jury by defendant had been withdrawn. To transfer it at that late period to the jury docket would carry the case over another year before it could be tried—insisting that he had the right to

have it tried by the court. Your honor, however, granted the application for a jury, because the Supreme Court had spoken of it as being the peculiar province of a jury to terminate such matters. The case came on the following year, on which the jury could not agree. It again came on, when the plaintiff proposed to dispense with a jury, and to try it before the court, which proposition was rejected by defendant, when a jury was empanelled, who rendered the verdict from which this appeal was taken, to disturb which would be fraught with incalculable mischief.

The defendant's counsel have had much to say about the many juries that have had this case under consideration; your honor will bear in mind that no jury, who have ever been allowed to hear the testimony, have made a decision unfavorable to the plaintiff, and that the case has never been before the Supreme Court since it decided what testimony should be received and what rejected.

Your honor recollects how strenuously Mr. Barker opposed the introduction of the correspondence between Mr. Mure and Lord Aberdeen, and particularly the abusive letter of Mr. Mure. It had not anything more to do with the points at issue in this case than the writings of Eugene Sue or other tales of fiction.

All parties who questioned the authority of her British Majesty's consul to displace captains of British ships by virtue of his official station, incurred his deadly hostility; hence the relentless war on Mr. Barker as well as on Captain York. Mr. Barker has fought against British presumption and arrogance for more than fifty years, and does not intend to haul down his flag on this side of the grave.

Having established all the charges made in the petition, I will proceed to the examination of the correspondence of Mr. Mure with the British government—a performance of a painful duty, which these gentlemen imposed upon me, by insisting on the introduction of the letter from Mr. Mure to Lord Aberdeen.

I admonished these gentlemen against so rash a proceeding; they would not heed my advice—therefore, they must abide the consequences.

Letter from Wm. Mure, H. B. M. Consul, to the Right Honorable the Earl of Aberdeen, Secretary of State for Foreign Affairs.

BRITISH CONSULATE,
NEW ORLEANS, June 16, 1845.

MY LORD: I take the liberty of laying before your lordship a statement of facts in relation to the British barque *Aldebaran* and the late commander, Captain York, which, in consequence of the unprecedented course pursued by the captain and his legal adviser, has been the cause of a great deal of anxiety and trouble in the discharge of my official duties. I had hoped to have spared your lordship the

necessity of this communication, the more especially as the course which I pursued was sanctioned by the accredited agent of the owner in this city, (Mr. R. H. Chilton,) and his proceedings as well as my own have since been ratified by the owners themselves, Messrs. Holderness & Chilton, Liverpool. From the pertinacity, however, with which Captain York has opposed my authority, and the misrepresentations and garbled statements made by Mr. Jacob Barker, his counsel, which have been printed in pamphlets, and reiterated again and again in the newspapers, I have been recommended by Mr. Packenham, whom I advised on the subject, to furnish your lordship with a detailed statement of the circumstances of the case.

The British barque *Aldebaran*, belonging to Thomas Hunter Holderness, of the firm of Holderness & Chilton, Liverpool, arrived here from the port of Hull about the 10th of March, and soon after his (Captain York's) arrival he lodged a complaint with me against his first officer, James Scott, for alleged disobedience of orders. On the 13th of March I entered upon an investigation of the complaint, having notified James Scott to attend to answer the charge made against him. Mr. Scott accordingly appeared, and Captain York was accompanied by Edward Mason, second mate, Wm. Williams, William Knight, George Ritchie, and James Senior, seamen on board said vessel. The captain also produced his log-book. I perceived that some of the men were groggy, and the captain himself labored under the excitement of strong drink, and after examining them upon oath, I found that the captain had suborned them, and had promised them a reward if they would testify against Scott. I also learned that the entry made in the log-book, on the 27th of February, which was produced in support of the charge against Scott, was written upon the slate by the captain, and that Edward Mason, the second mate, was ordered to insert it, exactly as the captain had written it, and forbidden to alter a word of it at the peril of his life. Edward Mason then testified upon oath that the said was not correct or true in many particulars, and that he had written it under fear of the captain. After examining the rest of the witnesses, also under oath, I found the charge of the captain against the mate to be frivolous and unfounded, and that unless Mr. Scott was willing to take his discharge from the vessel (a course which I sometimes recommend for the sake of peace) I could not compel him to be discharged. Mr. Scott stated that under the circumstances he could not consent to leave the vessel, as that would be tantamount to a confession that he was in the wrong, and might ruin his prospects for life. Upon this the captain became extremely violent and abusive in his language; he threatened to force the mate ashore at the peril of his life, whether I agreed or not, and with an

oath and most indecorous language, told me "that if I was consul he would show me that he was captain of the ship." Learning that this was his first voyage as captain, I endeavored to reason with him upon the impropriety of his conduct; exhibited to him the act of Parliament of 7th and 8th Vict., cap. 112; pointed out to him the penalties he would inflict upon himself and the owners by perseverance in such a course of conduct; and, as he was very much excited, I gave him a week to consider of this matter. In the meantime, in order to prevent bloodshed, which I was apprehensive might follow if Mr. Scott persevered in his intention of returning to the vessel, I recommended him to go to a boarding-house and remain passive for the time I had specified. About a week after this examination I found he (the captain) was not only intractable, but had also displaced his second mate, Edward Mason, and had threatened to force on shore the whole of his crew. On the 26th of March the crew appeared in a body at my office and made a complaint against the captain for having threatened the lives of some of them, and in particular of having assaulted John Lever and William Whitton without provocation, and of having pulled out a loaded pistol upon Francis Mennill, the steward. The crew stated that the captain was in the habit of being frequently intoxicated, laboring under the excitement of which he was so violent that they apprehended danger to their lives. I told the crew to return to the ship to their duty, and I then notified the captain to attend at the consulate office and give an account of his extraordinary conduct.

To this, however, he paid no attention. On the 31st of March the whole crew again appeared at my office and stated that on the previous evening (Sunday 30th) the captain, who was very much intoxicated, had gone forward to the fore-castle and stripped off his coat and vest and challenged the crew to fight him, one after another, and on their refusal to take any notice of him, he had pulled out a loaded pistol and threatened with oaths that "if the consul would not allow him to make a clean sweep of them, he would do for them when he got to sea." This testimony was corroborated by Cornwall Meek, the cook, who has been thirty years at sea, ten of which he was in the employment of the same owners, Messrs. Holder-ness & Chilton. He adds that during all the time he had been at sea he had never seen any captain conduct himself in the same disgraceful manner as Captain York. The crew there, one and all, protested against returning with the captain, as they were now deprived of the countenance of the first and second officers, whose presence might have been some protection against the violence of the captain, who had apparently produced a feeling amongst the crew almost amounting to mutiny.

I again notified the captain, on the 3d April,

to attend at the consulate office and produce his log-book, in which application I was seconded by Mr. R. H. Chilton, the agent, whom I had apprized of Captain York's irregularities and who promised to attend at the time specified, and consult with me what was best to be done in this emergency. To this summons Captain York again paid no attention; but meeting me accidentally a few days afterwards in the street, attacked me with the most opprobrious epithets, and employed the most insulting language. The vessel being chartered, I then applied to the agent of the charterers, Messrs. Gordon, Wylie, & Co., who, however, declined interfering, as they said they had nothing to do with the captain or the discipline of the vessel, their responsibility merely consisting in giving a certain number of bales of cotton at a certain freight. Upon consulting again with Mr. Chilton, I suggested that the only course left was to resort to the unusual step of superseding Capt. York in the command of that vessel, in order to *preserve the property of the owners*, to prevent the *forfeiture of the insurance*, and, at the same time, the expense of sending the whole crew to Hull, which would have been considerable, as there were no vessels loading for that port at the time. Accordingly, on the 10th April, Mr. R. H. Chilton forwarded me a letter, of which the following is a copy:

NEW ORLEANS, April 10, 1845.

SIR: As you have apprized me of the conduct of Captain York of the barque Aldebaran, since his arrival in port, by which he appears to have lost all discipline on board the said vessel, occasioned by his irregularities and misconduct towards the chief officer and others, I concur with you in opinion, that it is absolutely necessary for the interest of his owners, my particular friends in Liverpool and Hull, to supersede the command of the captain at present, and I shall agree, upon the part of the owners, to provide the said Captain York with a passage to England, agreeably to the act of Parliament.

In the meantime, I shall look out for a competent captain to take charge of the vessel.

I am, sir, your obedient servant,

R. H. CHILTON.

WILLIAM MURE, esq., H. B. M. consul:

Captain York was notified of this by Mr. Chilton, and Mr. Scott, the mate, was placed in temporary command, until Mr. Chilton could find a trustworthy and competent person to take command of the vessel. A few days thereafter, Mr. Chilton introduced to me a Captain Benjamin Turner, who exhibited to me credentials of the very highest character, and he was accordingly placed in command of the vessel by Mr. Chilton, with my consent. Captain York at first succumbed to his displacement; but in consequence of a morbid sympathy created amongst a few of the British

shipmasters, some of whom were his convivial companions, he was induced to make application to several lawyers for advice. None of them, however, of any respectability would interfere in the matter, but, unfortunately, he was obliged to place his case in the hands of Mr. Jacob Barker, who has rendered himself notorious on former occasions.

On the 14th of April, Mr. Barker addressed a letter to me, notifying me that it was Captain York's determination to apply to the courts of the United States to reinstate him in command of the vessel, and required to know upon what authority he was superseded. To this I simply replied, on the same date, by stating that Captain York had been superseded in consequence of the gross irregularities of his conduct, with the sanction of the accredited agent of the owners, and declining any further explanation regarding my authority as her Majesty's consul, in sanctioning the dismissal of a British captain.

It appears that Mr. Barker being at a loss what steps to take, recommended Mr. York to muster a sufficient number of men, and take possession of the vessel by force. On the following day, the 15th April, Captain York, along with some eight or ten individuals, forcibly entered the cabin of the vessel, and intimated his intention of retaining possession by force, and turning the whole crew adrift. Mr. Chilton, who happened to be on board at the time, fearing from the menacing language employed by the captain that a breach of the peace would ensue, repaired to the recorder's office, and made an affidavit to that effect. The recorder issued his warrant for the apprehension of Captain York, who was immediately liberated on bail, and the cause came for trial on 17th April. Mr. Barker, who had appeared in the recorder's court, induced the recorder, who was merely a committing magistrate, to enter upon an irrelevant examination as to the ownership of the barque and the authority of the agent, against which Mr. Chilton, at the request of his counsel, protested, and withdrew from the court. Although Mr. Chilton had been acting for some years as the authorized agent of the owners, in the management of this and several other vessels belonging to the firm of Holderness & Chilton, and although Captain York had recognized his authority up to the hour of dismissal, yet, having no special written power of attorney from the *individual owners*, but merely a general letter of authority from the firm, it became evident from the course matters were taking, that considerable difficulty would be experienced in getting the vessel to sea, and as might be expected, on 19th of April, the recorder dismissed the complaint.

Being extremely desirous to avoid any damage to the interest of the owners by delaying the vessel longer in port than was necessary to complete her cargo, I had, in the in-

terim, been using my utmost endeavors to effect an arrangement by which Mr. York might be reinstated in the *nominal* command of the vessel, and thus give him an opportunity of redeeming himself. I had several interviews with Captain Turner, then in command, with a view of persuading him to assume the position of mate or first officer. Finding the crew had great confidence in his management, I had some hopes of inducing them to return to the vessel notwithstanding all that had passed. After some little demur, I succeeded in my efforts, and persuaded all the crew, with the exception of two, to remain by the vessel. Mr. Barker, deeming Captain York's disgraceful language towards myself required some apology, induced him to sign a letter which he had penned, retracting the offensive expressions, which, however, I told him was unnecessary, as I did not allow my private feelings to interfere with my public duties. On mentioning the terms of the compromise to Mr. Chilton, and pointing out the difficulties of the case, in consequence of the interference of the recorder's court with the question of agency and consulate authority, he concurred in the proposed arrangement. I then waited upon A. G. Gordon, the agent of the charterers, who also, at once, gave consent.

Mr. Barker was again and again made cognizant of the terms of the proposed arrangement, and made no objection to Mr. Turner remaining as mate, although your lordship will see in the sequel that Mr. Barker had determined that his client, Mr. York, should violate the very essence of the arrangement upon which he was permitted to reassume that command which his conduct had so shamefully forfeited.

This course of leniency is the only point I can take blame to myself for having urged. If I could have anticipated the faithless manner and unprincipled conduct with which this act of clemency would have been met, I would have hesitated before I would have urged Mr. Chilton to have adopted such a course. Your lordship will, however, I trust appreciate the motive, and see the difficulties with which the case was surrounded.

The very first act of Capt. York, on getting on board, was again to turn adrift the whole crew, who came up to my office. Being heartily tired of the whole proceedings, and being at a loss what to do in the matter, I desired them to go to Mr. Chilton and seek for redress. It appears that Mr. Chilton, on ascertaining the extraordinary course persevered in by Captain York, repaired to the office of his counsel, Mr. John Winthrop, for advice, who recommended him, as a *dernier resort*, to libel the vessel in the United States court of admiralty, and at the same time to request my concurrence in the proceedings, which, by the laws of the United States, was necessary, as this was the only court which could take cog-

nizance of a case involving the rights of owners of British ships. I had no hesitation in giving my sanction to the proceedings. I mention this fact particularly to your lordship, because Mr. Barker, in an inflammatory article published in one of the newspapers, says that this sanction was unnecessary, and denounces my conduct as a piece of tyrannical oppression. I take the liberty of referring your lordship to a copy of a letter from Mr. Winthrop addressed to me, in which he points out the particular law in question. On the vessel being loaded, Mr. Chilton made application to the collector of the port, who, under the advice of the United States district attorney, cleared the vessel under the command of Captain Benjamin Turner. The shippers of the cargo took their bills of lading, and the agent of the charterers took his bill of exchange for the disbursements of the vessel; thus all parties interested recognized the captain in his official capacity. Notwithstanding all this the vessel was attached on several different occasions at the suit of York and Barker himself, the latter having made a claim of \$1,000 against the owners as his fees as counsel for Captain York. He also instituted a suit against Mr. Chilton for \$10,000 damages. In spite of all these annoying obstructions, Mr. Chilton succeeded, with great exertion, and after incurring considerable expense, in getting the vessel to sea, on the 28th April, in command of Captain Turner, along with the whole crew of the vessel, not one of whom had deserted the vessel, and who, so far as I could learn, under trying circumstances discharged their duties with punctuality and fidelity.

Immediately on the departure of the vessel, Mr. Barker, who seemed to have felt mortified and chagrined at the result, and to have made a personal matter of his client's case, resorted to the most extraordinary proceedings for the purpose of harassing myself and Mr. Chilton.

Under cover of an anonymous publication, professing to give a report of proceedings, which he (Barker) avows or disavows at his pleasure, he has perverted the facts, and introduced statements as correct reports of his speeches which he never uttered in court, misrepresented and falsified the conversation with myself, and indeed has distorted the whole facts of the case in a manner which has astounded me. I am at a loss to conceive what object he can have in view in thus continuing to invent facts and publish calumnies. His malevolence in this respect has become more conspicuous since the receipt of a letter from Messrs. Holderness & Chilton, addressed to me, transmitting an especial power of attorney by Mr. Thomas Hunter Holderness in favor of Mr. R. H. Chilton, of which letter the following is a copy. This letter having been written by the father of defendant was ruled out and not read to the jury.

It appears that Mr. Chilton, when he was apprised of the irregularities and misconduct of Captain York, had written to the owner, requesting that a special power of attorney should be transmitted to him.

Mr. Barker, however, is pleased to say that the full recognition of Mr. Chilton and of the act done by him in consenting to the superseding of Captain York, was obtained at my request, and upon *ex parte* statement furnished by me, although I did not write them at all until the 3d May, and therefore my letter could not possibly have reached them for a fortnight afterwards. This allegation of Mr. Barker is in accordance with many others of a similar nature and requires no comment.

There are other minor points and statements made and alluded to by Mr. Barker, upon which I forbear troubling your lordship with comments. Indeed I regret the necessity of the present lengthened communication. Had his statements been confined to his locality, where he is so well known, I would not have troubled myself or intruded upon your lordship's valuable time by rebutting them. There is but one opinion among the British or American merchants, many of whom had volunteered to address me a letter for the purpose of being transmitted to you, but I deemed this unnecessary, preferring to leave to your lordship's judgment the plain statement of facts now made, from which your lordship will readily perceive that imperative necessity impelled me to the course I pursued for the protection of the British merchants and the preservation of their property.

I have the honor to be, my lord, your lordship's, &c.,

WM. MURE.

Right Hon. the EARL OF ABERDEEN, R. G.

I hereby certify that the above is a correct copy of my dispatch to Lord Aberdeen, copied from the records in my office.

WM. MURE,

H. B. M. consul.

NEW ORLEANS, March 7, 1851.

The consul here tells Lord Aberdeen that he has been "recommended by Mr. Packenham, (the British minister at Washington,) to furnish your lordship with a detailed statement of the circumstances of the case."

If ever there was a position imposing on a public functionary the obligations of truth and candor, it was this.

Reference to dates throughout this case is highly important.

Mr. Mure, by giving dates, has aided me in establishing his inaccuracies.

On the trial of this case before this court on the 6th of March, 1851, Mr. Mure swore: "I

proceeded with the investigation so far as I could, and examined the log-book, and found that the log-book, in relation to the charges brought, had been erased and written over again, which induced me to discharge the complaint made against the mate as unfounded. I applied to Chilton, and told him it was absolutely necessary the captain should be removed. Mr. Chilton concurred, and after notification of the fact to Captain York, he was removed. The mate was appointed temporarily to take charge, until a fit captain could be procured; that some days after, York, before taking counsel, came to me, and begged to be placed again on board; that he was sorry, and retracted the offensive remarks he had made, and begged to be allowed another trial."

Witness said he had no objections, provided Chilton consented, which he did, and York was put back in command. This, he says in his testimony, given on the trial of this case, was after the appointment of Scott, and before the plaintiff consulted counsel; and goes on to state to the earl, that shortly after plaintiff began his acting again, displaced his second-mate, and threatened to turn all the crew off, and said he would not have one of them on board. Compare this with Mr. Mure's letter to Lord Aberdeen, where he speaks of York being violent, insolent, impracticable, resisting his authority, &c., and it will be seen that Mure swore at random. How or when was he put back in command?

His recollection was again totally at fault in the matter of the log-book. It had not been erased and written over, nor did Mason, in his testimony, sustain the allegation of the consul, "That what he had written on the log was written when he was in fear of his life, or that Captain York had suborned some of the sailors, by promising them grog, to swear against Scott."

That the log-book had not been erased and written over, was established by its production in the recorder's court, as well as by the testimony of Mason; and Mr. Mure knew this; he stated in his dispatch to Lord Aberdeen that it had been written on a slate and copied therefrom into the log-book. Mason swore that the logs were not made up at the time of their dates, but as soon thereafter as he had time or leisure, sometimes a day or two after.

The defendant's first letter to plaintiff was written on the 4th of April; on the 5th he writes to him that the consul had that day placed Mr. Scott upon the register of the *Aldebaran*, &c., as master of said barque.

Mr. Mure tells Lord Aberdeen that on the 10th of April the defendant forwarded to him a letter, of which Captain York was notified; and Scott, the mate, placed in temporary

command, furnished the earl with a copy of the said letter, which was evidently written long after the occurrence, got up and *antedated* for the occasion, as was the bill of parcels for the chronometer; had it been otherwise, it would have been written on or before the 4th of April, when he attempted to appoint Scott, and notified Chilton thereof; it is therefore evident that no letter was written by the defendant to the consul on the subject until the consul had occasion to display before Lord Aberdeen.

Mr. Mure, in his dispatch to Lord Aberdeen, says that "Captain York at first succumbed to his displacement."

I will ask your honor whether this is not contradicted by every action of Captain York, as detailed by Mr. Mure, as well as the concurrent testimony of all the witnesses in relation thereto.

Again, the consul says, when referring to the said street conversation, which he says was a few days after the summons of the 3d of April, "I applied to the agents of the charterers, Messrs. Gordon, Wylie & Co., who declined to interfere; and, upon consulting again with Mr. Chilton, I suggested that the only course left was to resort to the unusual step of superseding Captain York in the command."

On the 5th, Chilton tells York that H. B. M. consul had that day placed Mr. Scott upon the register of the *Aldebaran* as master of said barque.

How then could he say that the suggestion to Chilton to remove Captain York was after the refusal to Messrs. Gordon, Wylie & Co. to interfere; that the application to them was after said street conversation, and that such conversation was a few days subsequent to the 3d of April, and to his application to Chilton.

The relation of the day's work being kept on a slate, and copied into the log-book on the following day by Mason, under the charge from plaintiff to copy it at the peril of his life, word for word, as it was written on the slate, was intended to make his lordship believe that the keeping work on a slate as it occurred, and writing it into the log-book the next day, was a fault, and that it had been there falsely recorded.

On the trial of this case on the 15th of January, 1855—

Captain Charles A. Berry being sworn on the part of the plaintiff, says that it is customary for the officer on watch to keep a record of what occurs for the four hours of his watch on a slate, and to copy it into the log-book as soon as he had leisure, generally on the following day. Having heard the testimony of Edward Mason read, as contained in the record from the recorder's office of the third municipality, says:

If any mate of mine refused to obey my orders at sea, I, as a ship master, would consider it a case of mutiny, and put him off duty.

It was admitted that Captain Seth Foster, if put upon the stand would corroborate the statement of Captain Berry.

The whole story of the apology of Captain York, after the appointment of Scott, which was on the 5th of April, and before taking advice or counsel, which it is in proof he did do as early as the 13th April, or sooner, is false.

No one who will compare this with the statement of Mure in relation to Captain York's rebelling against his authority from that time forward, day by day, or who will trace the proceedings from the 5th to the 13th of April, can help coming to the conclusion that this part of Mure's testimony is clear fiction or the effect of a distempered imagination.

If it had been erased and written over would he not have said so in his letter to Lord Aberdeen?

Whether the complaint was unfounded or not depends on the facts. What were they, as recorded and sworn to by Mason, the second mate, the enemy of York, sworn to after he had embarked bitterly in this quarrel?

The first great fault charged against Capt. York was his having caused to have been written in the log-book, on the 28th, under date of the 27th, what happened on the 27th. The practice, on further examination of the witness Mason, turned out to be to put down the work as it occurred on the slate, and to copy into the log-book as soon thereafter as they had time, sometimes not until a day or two after.

The pretended error in the entry of the 2d March is equally ridiculous. Scott had been off duty four days, and was endeavoring to create a disturbance among the crew, when Captain York ordered him to desist. Scott's reply, as put down in the log-book, was, "that he would do as he liked for the master;" when

the language he used was, "that he should speak to whom as he liked."

In what particular he considered the entry of the 11th of March untrue does not appear, nor was it material. Scott, being off duty at the time, having taken his clothes on shore, and having been provided or recommended to a boarding house by the British consul, with advice not to return to the ship, as stated by Mr. Mure, it is not likely that he had any intercourse with Captain York on the subject of consent, and Mason being of his party, probably considered the consul's consent as warranting him in saying that the entry which stated that he was on shore without consent was untrue.

When Mr. Mure was on the stand as a witness, on the 28th of April, 1847, in the suit for counsel fee, Mr. Barker, wishing to refute the falsehood which had been circulated, charging him with improper conduct in this business of the *Aldebaran*, requested him to explain, when Mr. Mure testified that he did not know that the plaintiff appeared in any other way in the matter except by suits and litigation; that in the last conversation he had with the plaintiff, he (plaintiff) said that if he could get witness to let York go back and take command, he should be gratified. Captain York was not taken back; and when a witness for the defendant, on a former trial in this case, being cross-examined, he testified that "In the first interview Mr. Barker manifested a disposition to have the matter amicably settled. A few days after the correspondence with Mr. Barker—it might have been four or five days—Mr. Barker called upon me. Captain York was constantly transgressing and begging for mercy until this suit was brought. I did not allow Captain York to approach me after the post office affair."

What becomes of Mr. Mure's statements about Mr. Barker's conduct? What becomes of his declaration that York had been reinstated? What interpretation is to be put on his letter to Captain York of the 21st of April? Was this letter a designed fraud to obtain the apology from Captain York? If so, was it not bad faith to Mr. Barker, as well as to Captain York?

Mr. Mure, in his dispatch to Lord Aberdeen, says: "The cause came on for trial on the 17th

of April; Mr. Barker, who appeared in the recorder's court, induced the recorder, who was merely a committing magistrate, to enter upon irrelevant examination as to the ownership of the barque and the authority of the agent, against which Mr. Chilton, at the request of his counsel, protested and withdrew."

Let this statement be compared with the record of the proceedings, and it will be seen that so far from Chilton's withdrawing on the 17th under protest, he, although an alien and not a member of the bar, appeared for the State, was examined as a witness, employed counsel, Mr. Winthrop, who appeared; Mr. Mure also appeared, and made a speech, insisting that he had the same authority over ship-masters as he had over seamen, and the cause was continued until the 18th, to give Chilton an opportunity to consult counsel about producing authority; not having such authority, he did not produce it, or appear; the cause was again adjourned to the 19th, to give Chilton an opportunity to sustain his very, extraordinary oath; on the 19th he appeared and gave for reason of his not appearing at the first adjourned session, that he was negotiating a compromise.

This is very different from withdrawing under a protest. Mr. Mure was also much mistaken as to the recorder being only a committing magistrate. It was not Mr. Barker, but the total want of evidence in support of Chilton's oath, and the law, and the evidence adduced by Mr. Barker, that influenced the decision of the recorder.

Mr. Mure stated to the Earl of Aberdeen that "Mr. Barker, being at a loss what step to take, recommended Mr. York to muster a sufficient number of men, and take the vessel by force. On the following day, April 15, Captain York, with some eight or ten individuals, forcibly entered the cabin of the vessel, and intimated his intention of retaining possession by force, and turning the whole crew adrift."

When the consul was on the stand as a witness, he said, in answer to an inquiry by what authority he made that statement, that Captain York said that he was acting by advice of Mr. Barker; that he believed it because Mr. Barker had, in an interview at the consul's office, when negotiating a com-

promise, stated that Captain York's legal rights were to eject by force any interference which might be attempted with his command. Being asked when the interview took place with Mr. Barker, he said some days after his correspondence commenced; it might have been eight or ten days—certainly three or four days. The complaint to the recorder against Captain York had no foundation. Mr. Barker's correspondence commenced on the 14th, and the oath of Chilton was on the very next day. Mr. Barker, in his first letter, dated the 14th of April, said:

"The friendly relations which have always subsisted between us induce me to notify you of Captain York's determination to apply to the courts of the United States to restrain all interference with his authority as master of said vessel," &c. The advice given Captain York by Mr. Barker the preceding evening, as sworn to by two witnesses, Thomas Fisher and Thomas Hill, was in accordance therewith, and directly the reverse of this allegation, made by Mr. Mure; no intimation of such an occurrence was given by Mr. Chilton in his testimony, or Mr. Winthrop, his counsel, nor Mr. Mure, in their speeches before the recorder, nor did any of their witnesses confirm this statement.

Mr. Mure stated, on one examination before this court, that Mr. Barker called at his office soon after this correspondence commenced, and appeared anxious to effect a settlement; and at another examination he stated he had been there four or five times; expressed his great desire to have Capt. York reinstated, and not a word anywhere of any disagreement between them at that time, or of any complaint by Mr. Mure of Capt. York having acted in bad faith. If Capt. York had made any such statement, on the day referred to, would not Mr. Mure have been likely to have mentioned it to Mr. Barker, there being no possible object for concealment? Mr. Barker therefore concludes that if Capt. York held any such conversations it was on some subsequent day, which Mr. Mure confounded with this occurrence, as it has been shown that he was not particular to make his dates square with the facts.

Had Capt. York forcibly retained possession, it would have been a mere exercise of his legal rights, not a breach of the peace. He never made any such demonstration.

Had it been true that Captain York, with eight or ten individuals, forcibly entered the cabin of the vessel, and intimated his intention of retaining possession by force, and turning the whole crew adrift, would not Chilton or Mason have related it when under examination as witnesses before the recorder? Would not the consul have referred to it in his speech before the recorder?

Mr. Mure represented to the Earl of Aberdeen that Mr. Barker recommended the defendant to take forcible possession of the barque, when he had a letter from him the preceeding evening at direct variance, confirmed by the testimony of Captain White, Fisher and Hill, with whose testimony Mr. Mure was familiar, when he thus wrote to Lord Aberdeen, on the alleged authority of a man whom he had pronounced to be totally unworthy of belief, and this, too, without remonstrating or asking any explanation of Mr. Barker, although carrying on a friendly negotiation with him.

"Permitted to return," says Mr. Mure. How or when? He could not have meant permitted by his letter of the 21st April, as he states it was before taking advice of counsel, which he did on or before the 13th of same month. Counsel was at the time employed at his instance and request, drawing a petition to displace Captain York from the command of the *Aldebaran*, falsely stating, among other things, as a principle cause, that Messrs. Gordon, Wylie & Co, merchants of this city, are now loading the said barque, and have notified the agent of libellant that they will protest against her as unseaworthy in case the said York should proceed in her to sea, as captain or commander. Although Mr. Gordon had, on the same day, written him a letter as follows:

NEW ORLEANS, April 21, 1845.

DEAR SIR: Captain York, of the British barque *Aldebaran*, has promised not to ship any mate who shall not be approved by us, which is all we can reasonably ask.

Dear sir, yours truly,

GORDON, WYLIE & CO.

WM. MURE, esq.

On the trial of the rule in relation to this libel, Mr. Gordon testified that he had not given any such notice. Mr. Mure, on the trial of this cause, stated that he had received the aforesaid letter; that he had mislaid it, had looked for, and could not find it. On the morning of the 21st, Chilton swears to the petition, which stated that it was at the instance and request of Mr. Mure, thus co-operating with him as an ally or leader in the controversy, which he continued to the end. These very proceedings, he informed Mr. Moore, were about commencing when he sent the message to Mr. Barker that he was very sorry, and would endeavor to dissuade Chilton therefrom; and he says, in his dispatch to Lord Aberdeen, that he had no hesitation in giving his sanction to these proceedings. I would ask your honor if such complete proof of faithlessness was ever before brought before a court of law?

Let it be remembered that the cause in the

recorder's court was decided on the 19th April. The letter of Mure to Captain York, detailing the terms recognizing him in command, with permission to discharge Scott, was written on the 21st of April; that he declared on that evening, at the Commercial Exchange, to Mr. Moore and Mr. Robinson, that the dispute was all settled, and that he had washed his hands clear of it, on this side the Atlantic.

On the trial of the cause, on the 19th inst., Mr. Mure, a witness on the part of the defendant, testified as follows: "In the conversation which I had with Moore, my remarks were to this effect: that the proceedings were now in the United States court, and that I now washed my hands of the matter, on this side the water. I had conversations with Mr. Moore and with Mr. Robinson several times; the first conversation was before the libel suit was instituted, but after the suit had been recommended by Mr. Winthrop."

For the first time, we are now told that he *excepted the libel in his disclaimer, and in the message he sent to Mr. Barker, on the evening of the 21st.* His letter of that date, in effect, contradicted this, and the testimony of Mr. Robinson and of Mr. Moore is in direct contradiction of what he says, as much as Mr. Gordon's was of the false declaration put forth on the same day, in the petition for the libel. How could the jury give credence to such a witness?

Mr. Mure, on the trial, perceiving the force of the testimony, attempts to escape from the odium thereof by saying that he excepted, in his declarations to Messrs. Moore and Robinson, the libel suit which was then preparing. Had Mr. Mure made that exception or reservation, would it not have been equally a violation of the terms of his letter written to Captain York that very afternoon? What sincerity could there have been in consenting to York's discharging Scott, if the ship was to be taken from him the very next morning, at the request of Mr. Mure? Therefore, if he did make that exception, it could not relieve him from bad faith. However, he did not, nor could he have made that exception; that was the whole question, and nothing else to settle, and it would have been ridiculous to have sent any such word to Mr. Barker.

Messrs. Robinson and Moore contradict the

statement. Mr. Moore testified as follows: Michael Moore, being duly sworn on the part of the plaintiff, says, "that on the evening of the 21st of April, 1845, he met Mr. William Mure at the reading-room of the Merchants' Exchange, who inquired where Mr. Barker was likely to be found, when I said that he was no doubt at his house at that time. Mr. Mure requested me to say to Mr. Barker, that he believed Mr. Chilton was about to take further proceedings in the Aldebaran case; but as far as he was concerned, on this side the water, he washed his hands of it, and would persuade Mr. Chilton to do so likewise. The above may not be the exact words used by Mr. Mure, but they are as near as I can recollect now, and I feel certain they contain the spirit of his remarks."

Mr. John G. Robinson testified that he met Mr. Mure at the Merchants' Exchange, on the evening of the 21st of April, when he observed that the difficulties in relation to the Aldebaran had been settled, and that he washed his hands clear of the subject on this side the Atlantic.

Mr. Robinson's recollection, as to time, was not precise, but Mr. Mure's last testimony established the fact of its being on the 21st. "It was," said he, "after Mr. Winthrop advised the libel and before it was filed."

Mr. Mure, in his dispatch to the Earl of Aberdeen, says:

"Your lordship will see in the sequel, that Mr. Barker had determined that his client, Mr. York, should violate the very essence of the arrangement upon which he was permitted to re-assume the command which his conduct had so shamefully forfeited."

Mr. Mure wrote thus, when Mr. Barker had, from the first, advised Captain York not to undertake to maintain his power by force; to rely on the courts of the United States to protect him in his rights; negotiated the terms of the settlement between Mure and Chilton, one condition of which was, that York should satisfactorily apologize to Mure, which he did do, and which Mr. Barker prepared and delivered in good faith, and which apology Mure says, in his letter to Lord Aberdeen, Barker wrote; observe that while Mr. Mure was writing the acceptance of the apology, the recognition of Captain York being in command and the permission to discharge the mate, their counsel,

Mr. Winthrop, was, at the request of the consul, drawing the petition to turn him out.

Mr. Barker, under such circumstances, could not help considering such a faithless violation of every obligation held sacred by honorable men, as doing him a personal wrong; but he was neither mortified nor chagrined, he did not consider faithlessness a victory obtained in a battle of wits—a fool may put a torch to the house of a man of talents and destroy his whole family when sleeping.

Mr. Mure tells Captain York, in his letter of the 21st: "I do not permit my private feelings to influence my public duties." This he also detailed in his dispatch to Lord Aberdeen.

Why this disclaimer? Why grant, on the receipt of the apology, permission to discharge the mate, which had been the whole bone of contention? Why recognize Captain York in command? This permission and this recognition were conceived in sin and brought forth in iniquity, or were basely violated the moment of their inception, established beyond the possibility of a doubt, by the most conclusive testimony ever produced in a court of law. Did he not pursue him with "a step as steady as time, and an appetite as keen as death," from the hour that Captain York defied his authority, to the end; and yet, he wishes it believed that he did not allow his private feelings to interfere with his public duties. What was the course of Mr. Barker? Did he not, on the application of Captain York for his professional services, politely notify Mr. Mure? Did not that gentleman reply that he was acting with the "sanction of the accredited agent of the owners?" Did not Mr. Barker say: "Let the authority from the owner to any other agent than Captain York be exhibited, and it will end the whole matter?" In place of presenting such an authority, was not a most abusive course pursued towards Mr. Barker, as well as to Captain York, notwithstanding which did not Mr. Barker continue his exertions to bring about a compromise? Did he not advise Captain York that he had no right to turn the mate on shore, without the consent of the consul? that if he did so, and left him in a foreign country, he would be liable to be punished, on his return to England, according to laws referred to by the consul; but that this would not give the consul any authority to displace him, much less

would threatening to do so subject him to punishment or give authority to the consul; yet, that he ought to apologize for having threatened to do so.

I cautioned the gentlemen against introducing this letter. They would not heed the admonition, and now have to take the consequences. The public eye is scrutinizing these men.

Mr. Mure, in his letter to Lord Aberdeen, says:

Accordingly, on the 10th April, Mr. R. H. Chilton forwarded me a letter to the Earl, of which he sends a copy, (see page 265,) saying that "Captain York was notified of this by Mr. Chilton, and that Mr. Scott, the mate, was placed in temporary command."

Mr. Chilton informed Captain York, on the 5th of April, that Scott's name had that day been placed on the register as master of the barque. How could Mr. Mure say that these transactions were subsequent to the 10th of April, when he knew them to be prior.

The letter of the 10th was written for the occasion, and ante-dated for the purpose of making up a plausible story with which to deceive Lord Aberdeen.

The allegation that Captain York was notified of its contents is false.

The selection of Scott was not intended to be temporary; if it had been, why put his name on the barque's register. That was not necessary until the ship was loaded and ready to clear at the custom-house. The appointment of Turner to the command was not until the consul was forced to believe in the unworthiness of Scott.

The allegation that Scott was appointed temporarily to the command of the *Aldebaran* is false.

This letter was not received on the 10th April, it was not written until long after that date.

When this was brought to the view of the jury, the defendant said it was a clerical error. Another falsehood.

The consul says that when he informed Captain York at the consul's office that he would not grant permission to discharge Scott, which permission had been applied for by York, "that his charge was frivolous and unfounded, that the captain became extremely violent and abusive in his language; he threatened to force the mate on shore, at the peril of his life, whether I agreed or not; and, with oath and

most indecorous language, told me that if I was consul, he would show me he was captain of the ship." He further says: "On the 26th of March, I notified the captain to attend at the consulate office—to this, however, he paid no attention."

"I again notified the captain, on the 3d April, to attend at the consulate office. To this summons Captain York again paid no attention; but, meeting me accidentally, a few days afterwards, in the streets, attacked me with the most opprobrious epithets, and employed the most insulting language." Thus in his testimony he calls the post-office affair.

On the 3d of April, two suits were commenced against Captain York by Mason in Judge Bright's court.

The statement that Mr. Barker was at a loss what steps to take is false. He had notified Mr. Mure what steps would be taken. The statement that he recommended Mr. York to muster a sufficient number of men and take possession of the vessel by force is false.

The statement that Mr. Barker misrepresented and falsified conversations with him is false.

The statement that Mr. Barker avowed and disavowed at pleasure certain publications is false. The only thing which he ever disavowed was a street report, which made him say, the false and fraudulent order drawn up by the defendant's counsel, and signed by the clerk of the United States court, was a forgery. For this he was called to an account, and promptly denied ever having so characterized the paper, telling the gentlemen that he had pronounced it false and fraudulent. Which he should continue to do and which he has always done, in and out of court, in the public papers and in private correspondence.

A gentleman reported for the newspapers the speech made by Mr. Barker in the United States court, which not suiting the taste of the consul, he demanded of Mr. Barker an explanation, who replied that he was not answerable for the errors of reporters—that he could not undertake to say how far this speech had been correctly reported—that if he had not said what had been reported, he ought to have done so, and held himself answerable therefore. This the consul falsely calls avowing and disavowing at pleasure.

The consul testified on the trial of this case, that he had acted according to the laws of England. This was false. None of her laws sanction the conduct of which we complain. No such law has been given in evidence or referred to. The law on which the consul relied and referred to in his letter to Mr. Barker is in evidence, and not a word to that effect is to be found therein. Had Captain York departed, leaving his mate on shore, without the consent of the consul, he would, by those laws, have incurred heavy penalties—but not by threatening to do so. Incurring these penalties in nowise would have authorized the conduct of the consul.

His testimony when he swore that the log-book had been erased and written over was false.

His testimony that Thomas Hunter Holderness resided at Hull was false.

The statement that there was but one opinion among the British and American merchants, meaning that it was in his favor, was false. The verdict in question does not sustain the consul's declaration.

The statement that York was reinstated in command, after the appointment of Scott and before seeking counsel, is false.

The consul tells Lord Aberdeen that this suit was among the difficulties which defendant had to encounter in dispatching the *Aldebaran*, which was false. It was not instituted until nine days after her departure.

The consul testified on the trial that four out of six of the crew were so drunk when they came to his office as to disqualify them from being witnesses in a court of justice, yet he tells Lord Aberdeen that they had all discharged their duties with punctuality and fidelity. This is the first time I ever heard of an employee getting drunk in the service of his employer was discharging his duties with punctuality and fidelity.

The statement that Mr. Barker resorted to extraordinary proceedings for the purpose of harassing the consul and the defendant is false.

The statement that Mr. Barker continued to invent facts and publish calumnies is false.

The statement that the vessel had been attached on several occasions, at the suit of York and Barker himself, is false; she never was

attached by York, and only once by Barker, in which York had no hand.

The statement that the charge against Scott was unfounded was false.

The consul tells Lord Aberdeen that, by the arrangement, he only intended that Captain York should be reinstated to the nominal command. Was not this treachery? Was not this deception? Was not this a fraud on Mr. Barker, who induced Captain York to make the apology, as well as on the plaintiff? I would ask your honor whether the consul's agreeing to reinstate Captain York (see Mr. Mure's letter of the 21st April) was for the purpose of "preserving the property of the owners—to prevent the forfeiture of the insurance?" this being his justification for the attempt to remove him. What does the consul mean by nominal command? Was it that he was to be sent home a prisoner in the keeping of the rebellious crew, and Captain Turner, the actual commander, to be denominated mate to deceive Captain York?

Chilton, in his application for a commission, states that Thomas Hunter Holderness is of Liverpool; the alleged copy of the register and power introduced on the part of defendant both represent him to be of Liverpool. Mr. Peter Maxwell testified that he was of Liverpool; the consul testified that he was of Hull. Was this from ignorance, or to aid in the deception heretofore so successfully practised as to the ownership of the vessel?

No questions asked of the witness before the recorder as to the plaintiff's attempts to suborn the sailors to swear against Scott. If it had been true, as stated by the consul in his letter to Lord Aberdeen, it should have been proven in that trial when the witnesses were in court, and the plaintiff could have had an opportunity of interrogating them.

The accredited agent of the owner, says the consul, recognized such by York; this was untrue, excepting that he was recognized as the agent duly authorized to assist in the purchase of an old flat-boat.

The consul tells Lord Aberdeen that Mr. Barker and Captain York were constantly begging for mercy. Can any one, after hearing his details of Captain York's conduct, believe in the truth of this assertion as relates to him? And as to Mr. Barker, he admits that he ex-

hausted every argument in his power to produce a reconciliation. To call it begging for mercy is a very unkind interpretation.

The consul tells the Earl of Aberdeen that Mr. Barker informed him that Captain York would apply to the courts of the United States to reinstate him in the command of the *Aldebaran*. So far from this being true, Mr. Barker's letter to the consul says: "As to having been superseded, he does not admit that he has been or can be superseded in the command of the *Aldebaran* by any other authority than that from which he derived his command."

The defendant published over his signature, on the 18th April, 1845, that "it was wholly untrue that the consul cited any authority to show the capacity in which he acted, or the power with which he was clothed."

The consul, in his first letter to Mr. Barker, referred to 46 and 47 sections of the navigation act, 7th and 8th Vict., chap. 112.

The consul tells Lord Aberdeen that, a few days after the 3d of April, Captain York met him accidentally in the street, and attacked him with the most opprobrious epithets; that he then applied to Messrs. Gordon, Wylie & Co., who, your honor will recollect, were the regular consignees of the ship; that they declined to interfere; and that, on the 10th April, R. H. Chilton forwarded him a letter, of which he inclosed a copy—Scott having been placed on the register as master on the 5th—those few days dwindled down to at least *one*.

The consul tells Lord Aberdeen that Mr. Barker, under the pretence of giving a report of the proceedings, he perverted facts, &c., when the proof is that the commanders of British vessels in port made a subscription to pay the expense of printing the legal proceedings without the intervention of Mr. Barker.

More faithless conduct has never been unveiled to the view of any court than was that of the consul and defendant in this pretended adjustment of the difficulty.

No circumstance, not one word of evidence, no equivocal proceeding, has been produced on any of the trials, which indicate on the part of the counsel for plaintiff any departure from his professional duty. On the contrary, from the commencement to the libel suit, his whole mind was devoted to an amicable settlement.

The consul tells the Earl of Aberdeen that the malevolence of Mr. Barker surprised him. I would ask your honor if the evidence does not falsify the charge? Was it to be found in the letters of Mr. Barker or the letters of plaintiff drafted by Mr. Barker? Was it to be found in the apology of Captain York?

The consul complains to the Earl of Aberdeen that Mr. Barker had denounced his conduct as tyrannical, &c.; did not the testimony establish the truth of this charge? Mr. Barker has been, from infancy, in the habit of calling things by their right names. It is now too late in life for him to change the practice.

I would ask your honor on whom the testimony locates the malevolence.

Mr. Barker insists that his offence consisted in his embarking in defence of an oppressed prisoner, in a strange land, without money to fee lawyers, and his fidelity to that client after he had embarked.

The consul on one trial testified that Mr. Barker was incessant in his exertions to terminate the difficulties. On another trial he said Mr. Barker proposed to give his services gratuitously, if he could effect that object. Subsequently, he said Mr. Barker did not talk of giving up his fee, but said he was not actuated by his fee.

Mr. Mure tells Lord Aberdeen that the consul's consent to the proceedings was necessary to give them validity; such consent could not give them validity or confer jurisdiction on a court of the United States; this, however, is a point of law about which there may be a difference of opinion, therefore I should not blame Mr. Mure for this part of his statement, if that had been all he had done, if he had otherwise washed his hands clear of the whole affair on this side of the Atlantic, although he should have considered well that matter before making the promise which we find in his letter to Capt. York of 21st April, before making the declaration on the same evening to John G. Robinson, esq., at the Commercial Exchange, "that the whole affair was settled, and that he had washed his hands clear of it on this side of the Atlantic, before he sent to Mr. Barker by Michael Moore, esq. On the same evening a similar message, adding that Mr. Chilton was about taking proceedings for which he was very

sorry, and that he should endeavor to dissuade him therefrom.

Mr. Mure did not tell Lord Aberdeen that after Chilton had taken the ship forcibly from the officer of the United States court, and after she, by order of that court, had been brought back by the marshal, who sent a steamboat and arrested their criminal proceedings; that after this, he had, accompanied by some young lawyers, visited the judge's house late in the day to get an order to send off the ship; failing in this, that he accompanied the said lawyers to the clerk's office in the evening, who also refused to give such an order, on which an altercation ensued. The clerk became excited, and did not know what he did, when one of the accompanying lawyers drew up a false order, to which the clerk's signature with the great seal of the United States was fixed.

I would ask if such interference had also become necessary to give jurisdiction to the court, was it washing the consul's hands clear of the whole affair on this side of the Atlantic?

"At the instance and requesting" are very different from a mere consent to give jurisdiction.

Mr. Mure tells Lord Aberdeen that some English and American merchants had tendered him a certificate, I suppose of good conduct, which he demed unnecessary. How self-relying! It is to be regretted that the consul had not, cap in hand, courteously accepted their proffered civility, made his best bow, and sent the inestimable document to Lord Aberdeen. Had he done so, we should have had an opportunity of unveiling British influence.

I have been greatly aided by Britons, and on this occasion they made a subscription to have the proceedings published. British merchants made a subscription to pay Judge Lacy a fee for the services he rendered Captain York before the United States court. This may be news to Messrs. Chilton and Mure. These contributors do not wish to be known, lest they should have to encounter the undying hostility which Mr. Barker has had to encounter for his fidelity to his client. It is not against Englishmen, because they are English, that I would level my batteries; it is against the doctrine that our courts are to be influenced in their decisions by the British minister of foreign affairs, or some

other political minister of that or some other country; it is the presumption, usurpation and arrogance of their officials, with which I war. I did say to the jury, when it was attempted to introduce the opinions and sayings of Lord Aberdeen as a controlling authority for the decision of this court, that I thanked my God that the stars and stripes waved over this hall, and that the British cross, the lion and the unicorn are not the emblems of this court.

Both parties in this case are English; the witnesses on the part of the plaintiff are nearly all English or Scotch. Englishmen are among my best friends; the recorder's court was thronged with Englishmen, who sympathised with Captain York; a public subscription was made by the masters of British vessels in port to pay the expenses of publishing the proceedings. It was a novel assumption of Mr. Mure, in that notorious speech he made on the trial before the recorder, that he had the same power over the captains of British ships that he had over British seamen, which aroused ship-masters of every nation against him.

Again, Mr. Mure says, in his dispatch to Lord Aberdeen: "Captain York at first succumbed to his displacement, but in consequence of a morbid sympathy, created among a few of the British ship-masters, some of whom were his convivial companions, he was induced to make application to several lawyers for advice. None of them, however, of any respectability, would interfere in the matter, but unfortunately he was obliged to place his case in his hands of Mr. Jacob Barker, who has rendered himself notorious on former occasions."

Why tell this to the British government? They knew it to their cost. Mr. Barker's influence and advocacy of the embargo and of the non-importation laws were well known and felt by them. They refused even to negotiate for peace at Ghent, until they knew the fate of the American loan, which had been advertised for; the British party in America, as Mr. Gallatin informed Mr. Madison, in his dispatches from Ghent, had made the British ministry believe that the Washington cabinet could not raise money enough to continue the war, or even to commence the spring campaign. At this juncture Mr. Barker furnished his government with large sums, and during the war more than five millions of dollars, while

most others drew tight their purse-strings; thus blasting British hopes and idle anticipations. The administration was sustained, and an honorable peace was the result. These events, to which Mr. Barker owes his notoriety, form a part of our country's history. "Morbid sympathy created among a few of the British ship-masters," said Mr. Mure to Lord Aberdeen. Mr. Chilton, in his advertisement in the Bulletin, calls those gentlemen a crowd of ship-masters. I believe every ship-master in port reprobated the conduct of Mure, and disputed the authority of a consul to remove the master of a ship. These highly respectable men, many of whom were witnesses in the case before the recorder's court, came in for a portion of the odium Mr. Mure has been distributing broadcast.

Mr. Barker does not pretend to know much law, and he is not now, nor has he been for a long time, a candidate for professional business. It is, however, strange that Mr. Mure could not have found sufficiently opprobrious epithets to apply to him to have satisfied his spleen, without slandering the whole bar of Louisiana. He should have remembered that they were like other men, having an eye to their own interest, and if York had had money he could have procured the aid of the most respectable. Suppose the fact had been otherwise—it would have been an indelible stain on the whole legal profession of the city. He was mistaken in thus presuming that British influence was paramount to all other considerations.

Captain York at that time had been aided by Judge Lacy, Z. Latour, esq., and Mr. Barker; since which he has been aided by Judge Bullard, the Hon. Pierre Soule, J. W. Frost, and Horace Gaither, esquires.

Again, Mr. Mure tells Lord Aberdeen that "Captain York at first succumbed to his displacement." This is falsified by his own and the most positive testimony of others.

York, from the commencement down to the apology drawn by Mr. Barker, manifested the most positive opposition. Look at his interview at the consul's office, when the complaint against Scott was inquired into; look at his defiance of the consul's authority; look at his refusal to appear there again; look at his remarks in the street to Mr. Mure, as detailed

by himself; look at the manner in which all the measures against him were followed up, day by day, by Chilton's letters, by the seizure of his chronometer, by his arrest and imprisonment. What authority, then, had the consul for saying that Captain York at first succumbed to his displacement?

How did he succumb? Mr. Mure says when he notified Captain York of his determination not to grant the solicited permission to discharge Scott, the mate—

"The captain became extremely violent and abusive in his language; he threatened to force the mate on shore at the peril of his life, whether I agreed or not; and, with oaths and most indecorous language, told me that 'if I was consul, he would let me know that he was captain of the ship.'

"About a week after, I found the captain was not only intractable, but had committed sundry other offences.

"I then notified the captain to attend at the consulate office, and give an account of his extraordinary conduct. To this, however, he paid no attention.

"I again notified the captain on the 3d of April, to attend at the consulate and produce his log-book; to this summons Captain York again paid no attention; but meeting me accidentally a few days afterwards, in the street, he attacked me with the most opprobrious epithets, and employed the most insulting language, after which I did not allow him to approach me."

The consul says he was passive in the matter. I ask, was he passive?

The counsel for defendant said that plaintiff and defendant, being both Englishmen, should have gone to England and had their controversy settled there. The Supreme Court decided differently.

The Constitution and the law regulate that matter. Suppose one Englishman rob another, must that other go to England before he can prosecute the robber?

The case of Rev. Alex. Campbell, the President of Bethany College, Virginia, *vs.* Rev. James Robinson, was decided by the lords of council and session, in favor of Mr. Campbell, giving him two thousand pounds sterling for false imprisonment. He was on a tour through Scotland, in 1847, was arrested and imprisoned

in Edinburg, through the agency of the Rev. James Robinson, for having, while discoursing on the subject of slavery, uttered sentiments offensive to that gentleman.

Since these proceedings have been pending, a case has been decided at St. Louis, where the professional character of the commander had been improperly impugned; in which the jury gave a verdict for twenty-seven thousand dollars.

The counsel lay great stress on what they call ratification or approval. Does not the British government always approve the action of its officers? And was it not natural for the father to do all in his power to protect his son? Yet he did not swear in the case—although Mr. Winthrop swore that his testimony was material, and propounded to him questions directly to the point of ownership.

The frailty of the recollection of the defendant and of Mure, having been established by such an abundance of testimony, I think that all they have said to the prejudice of the plaintiff, together with the hearsay testimony from drunken sailors, will be excluded as unworthy of your honor's consideration.

Your honor will bear in mind that there has not been any testimony showing violation or an intention to violate the terms of any agreement by Captain York; he promised an apology, which he made, to the satisfaction of the consul; he promised not to ship any mate not approved by his consignees, Messrs Gordon, Wylie & Co.; he did not, nor did he attempt to do so, while Scott was retained, and sent to sea in the ship by Chilton, notwithstanding the consul's consent that Captain York should discharge him.

Judging from the conduct of Mr. Mure throughout this business, his deportment to defendant, York, must have been provoking in the extreme; and is it strange that he promptly resented it—a young English shipmaster, in a foreign country, finding his complaint against a rebellious and abusive mate, proven to have been so by the clearest testimony, declared to be frivolous and unfounded, and disregarded by the consul—a mate that he had found neglecting his duty—the ship off her course in the night, during the mate's watch, in imminent danger of being stranded; refusing to obey the legitimate orders of the captain,

whose sailing instructions were not to allow any of the crew to skulk. How could he help resenting it? It was enough to make a Merino lamb run mad.

It has been objected that the petition was too digressive. The duty of all plaintiffs is to spread their case before the court so distinctly that the defendant may know what he has to meet on trial. If, in doing this, the counsel for plaintiff went too much into detail, it could not harm the defendant although it might the plaintiff.

If there was any defect in the pleadings, the defendant's counsel had a remedy in applying to have the objectionable part stricken out, or of filing a peremptory exception; failing to do this before they answered and before they went to trial, the question is not open for argument.

Your honor cannot be unmindful of the various devices resorted to to avoid a fair trial on the merits of this case, saying nothing of what happened when Judge Buchanan presided. Enough has occurred under your eye to convince any court that a fair trial is not the object of the defendant, viz: peremptory exception, because Mure had not been made a defendant; that after having demanded a jury, and waived the exercise of that privilege, he waited until it was too late in the term to get it tried by a jury, and when called to be tried by your honor, he repeated his demand for a jury. He then urged that the plaintiff was dead, and that the suit should abate. Then came a motion to dismiss the suit, on the averment that the plaintiff had abandoned the cause, and that the counsel was prosecuting it for his own benefit. Then came the plea of *sickness*; then came the plea of absence of counsel; and finally came the plea that the costs of court had not been secured. And not a particle of testimony in support of any of those pleas except *sickness*.

With such demonstration fresh on the recollections of your honor, it cannot be expected that you will aid further procrastination.

DECISION OF A RULE FOR A NEW TRIAL.

YORK
vs.
CHILTON. } Fifth District Court.

This cause has, during more than ten years, occupied nearly one-half of the jury terms of

this court. After several mistrials, a jury, some years ago, found a verdict of one hundred dollars for plaintiff. My learned predecessor on this bench, Judge Buchanan, on defendant's application, set aside this verdict, and granted a new trial. Now a jury, composed of intelligent and respectable citizens, have thought proper to bring in a verdict of seven thousand five hundred dollars for plaintiff.

After an attentive consideration of all the circumstances attending this remarkable case, there is no doubt in my mind, that the plaintiff is fairly entitled to a verdict for some reasonable amount of damages, viz.: *First*. For the unlawful and offensive manner in which plaintiff was dispossessed of his ship by defendant, by means of an illegal order obtained from the clerk of the United States court. *Second*. The abrupt removal beyond the limits of this State of the said ship, occasioning the plaintiff the loss of a portion of his personal effects on board. *Third*. The unjust persecution and incarceration of plaintiff at the suit of defendant, without any just or probable cause.

However, considering that the jury has lost sight of several mitigating circumstances, the most important of which are, *First*. That the defendant is the son of one of the charterers of the ship; that, although he could not prove at the time that he was an accredited agent of his father, still that relation, although it will not justify his oppressive acts, will operate, however, as a mitigating circumstance—creating a presumption that his acts could not have been exclusively controlled by malice. *Second*. That the defendant's acts were subsequently ratified by plaintiff's employers, Chilton & Holderness, who had, by the written original contract, reserved the right of dismissing him at pleasure.

Therefore, as establishing a fair proportion of the actual loss sustained by the plaintiff at the hands of the defendant, and also as exemplary damages to vindicate the offended majesty of the law, I consider the verdict to be excessive and exorbitant.

At the trial of this case, the defendant labored under a very serious disadvantage. The able counsel who had during so many trials successfully struggled in his defence, was absent from the State.

The defendant, instead of securing the reliable services of the distinguished counsel who has so ably argued this rule on his behalf, did, in an evil hour of mistaken confidence, and inexperienced as he was in the strategy of the law, enter himself the list, single handed, against one of the oldest champions of this bar. Before a jury, and in a cause like the present one, he had as much chance of success as the *retarius* with his net and spear, coping in deadly conflict with a steel clad warrior, armed with battle axe and sword. Excepting only the latter one,

which is defendant's own fault, the above considerations should operate and have their due weight in support of the action made for a new trial.

This court, however, is not inclined to disregard entirely in this case the verdict of an intelligent jury; when by a legal course that verdict may possibly be reduced, and the cause be placed before the Supreme Court upon a reasonable award of damages, when the whole matter will be supervised and finally disposed of. This case would, probably, upon a new trial, take up one-half of the jury terms of this court during another lapse of ten years, to the unjust detriment of the other causes on the jury dockets.

It is therefore ordered, that in case the plaintiff, by his agent and counsel, will file, within a delay of ten days, a *remittitur* of the amount of *four thousand five hundred dollars*, and his acceptance of a judgment of *three thousand dollars*, then in that case let the new trial be refused. Otherwise, and on the non-compliance by said agent and counsel with the above requisitions, and in that case only, let a new trial be granted.

REMARKS BY MR. BARKER.

Although Mr. Barker considers that his honor, Judge Augustin, has taken a mistaken view of that part of the evidence on which he bases his opinion, that the damages allowed by the jury were excessive and exorbitant, he, conformably to the judge's suggestion, enters the remittitur of forty five hundred dollars, because he is anxious to terminate litigation, and because he does not believe that more than three thousand dollars could be collected from the defendant.

Mr. Barker is of the opinion that the damages awarded by the jury, so far from being excessive and exorbitant, should, from the testimony on record, have been for ten thousand dollars, the full amount claimed.

Mistaken, inasmuch as Messrs. Holderness & Chilton were not the employers of Captain York; they never had a written contract with him, nor were they the charterers, unless they represented the Hull Flax and Cotton Mills Company; or unless, as ship brokers, they procured from that company the charter, they never had the right to dismiss Captain York at pleasure, consequently could not have retained it by a written stipulation, or otherwise.

Those facts not being material, were not discussed on either trial; nor was any other than incidental testimony given in relation thereto by either party. The judge, doubtless,

was led into this error from the fact of Holderness & Chilton having signed the sailing orders, and that of Thomas Holderness, of Hull, the owner of the ship, (who is a very different person from Messrs. Holderness & Chilton, of Liverpool,) having retained that right, in terms, in his original contract with Captain York, dated the 1st of January. (See page 254.)

CAPT. YORK'S POWER TO MR. BARKER.

NEW ORLEANS, *August 2, 1849.*

SIR: Being about leaving Louisiana for California, I have to request that you press my claim on Richard Harrison Chilton to final judgment with all possible diligence, either in the existing suit or in such other legal proceedings as you may think best; and should a compromise be deemed expedient, you are hereby authorised to settle the matter as you may think best; to give, grant, and deliver all necessary and proper releases, and I hereby agree to ratify whatever you may do in the premises.

Very respectfully, your obedient servant,
W. B. YORK.

JACOB BARKER, esq.

WM. B. YORK, }
vs. } Fifth District Court of
R. H. CHILTON. } New Orleans.

In this case, his honor, Judge Augustin, having this day rendered judgment on the rule of defendant to show cause why a new trial should not be granted dismissing said rule on condition that plaintiff's counsel should enter a remittitur of forty-five hundred dollars of the verdict for seven thousand five hundred dollars rendered by the jury.

The plaintiff's counsel and agent hereby remits four thousand five hundred dollars of the said verdict. The said counsel and agent hereby agrees that the said verdict shall be considered as for three thousand dollars, and prays that judgment be rendered against R. H. Chilton in favor of plaintiff for that sum.

JACOB BARKER,
Counsel and Agent for
W. B. YORK.

THE WAR LOAN.

To the Honorable Court of Claims of the United States, sitting in Washington, D. C.

Your petitioners, Richard R. Ward, Fitz Green Halleck and Jacob Little, of New York, assignees of Jacob Barker, respectfully represent that on the second of May, 1814, the said Jacob Barker became a subscriber to the first loan, denominated the ten million loan, made under the act of Congress passed the 24th of

March, 1814, chap. 29. The terms of the contract upon which the said loan was taken, are fully set forth in the following correspondence between the said Jacob Barker and the Hon. G. W. Campbell, Secretary of the Treasury of the United States, to wit:

WASHINGTON, *4th month 30, 1814.*

"Respected friend: I will loan to the government of the United States five millions of dollars, receiving one hundred dollars in six per cent stock for each eighty-eight dollars paid, and will pay the money in the proportion, and at the period mentioned in the advertisement of the 4th of April, to their credit, in such banks of the United States as may be agreeable to thee.

"On the payment of each instalment and satisfactory assurances for the payment of the others, funded stock to be issued. It being understood and agreed that if terms more favorable to the loaners be allowed for any part of the twenty-five millions authorized to be borrowed the present year, the same terms are to be extended to this contract.

"The commission of one quarter of one per cent. mentioned in the advertisement to be allowed me on the amount loaned.

"With great respect and esteem, I am thy assured friend,

"JACOB BARKER.

"The Hon. G. W. CAMPBELL,
"Secretary of the Treasury."

TREASURY DEPARTMENT, *May 2d, 1814.*

SIR:—The terms on which the loan has been this day concluded, are as follows, viz:

Eighty-eight dollars in money for each hundred dollars in stock; and the United States engage, if any part of the sum of twenty-five millions of dollars authorised to be borrowed by the act of the 24th of March, 1814, is borrowed upon terms more favorable to the lenders, the benefit of the same terms shall be extended to the persons who may then hold the stock or any part of it issued for the present loan of ten millions.

Your proposal of the 30th April, for five millions of dollars of the loan having been at the above rate, or at a rate more favorable than the above to the United States, has been accepted; and you will please to pay, or cause to be paid, on the 25th day of the present month, into the bank or banks you have named, or into such as you shall name to the Secretary of the Treasury, on the receipt of this letter, twenty-five per cent. or one-fourth of the sum above stated, pursuant to the notification from this Department of the 4th April last, and the remaining instalments on the days fixed in the said notification. You will be pleased, also, on or before the 25th of May, to furnish the cashier or cashiers of the bank or banks, where the payments under your proposal are to be made, with the names of persons in whose be-

half the proposal has been made, and the sums payable by each.

The commission of one-fourth of one per cent. will be paid from the Treasury, after the payment of the first instalment on the 25th day of the present month.

I am respectfully, sir, your obedient servant,
G. W. CAMPBELL.

JACOB BARKER, Esq., New York.

Your petitioners further represent that the said Jacob Barker furnished large sums of money to the government, paying in specie, or its equivalent, receiving stock therefor pursuant to the said contract, of which stock there were three millions four hundred and forty-six thousand one hundred and three 57-100 dollars held by sundry individuals and institutions on which he was entitled to the benefit of the condition, near three million of which was held in trust for his account, and the residue had been sold reserving the benefit of the condition; for the amount held by each, your petitioners refer to the books of the United States loan offices, the use of which they invoke.

Your petitioners further represent that the Secretary of the Treasury, on the 31st of August, 1814, under the said law of 24th March, 1814, entered into another contract with divers persons and especially with Dennis A. Smith, of Baltimore, for a further loan, payable on the 20th September, 10th of October, 10th of November and 10th of December of that year, one-fourth each, which was received in the notes of the banks of the District of Columbia and of Baltimore, and that the said banks were then in a state of suspension and their notes depreciated from ten to twenty-five per cent. dependent on the dates when each instalment was received; for each eighty dollars of such notes received, the Treasury of the United States issued one hundred dollars stock.

Your petitioners further represent that they have been informed, and believe that further portions of the said twenty-five millions loan were negotiated by the Secretary of the Treasury subsequent to the 31st of August, 1814, for which depreciated paper was received, giving one hundred dollars six per cent. stock for each eighty dollars of such depreciated paper.

Your petitioners insist that upon these facts, by virtue of the contract made by Jacob Barker, as aforesaid, the holders of funded stock in the ten million loan, became entitled on the 31st August, 1814, to an amount of supplemental stock, equal to the difference between eighty-eight dollars in money paid for it, and the value of eighty dollars in depreciated bank paper paid by the subscribers for the second loan.

But the Secretary of the Treasury, estimating the payments for the second loan as so much money, and taking no account of the depreciation of the currency received, allowed supplemental stock only to the amount of ten

per cent. on the original stock, which was the mere nominal difference between the rates of the two loans, while the real difference was about three times that amount; and to make the injustice of this proceeding still more palpable, the Secretary of the Treasury refused to issue this supplemental stock to the persons who were the holders of the original stock on the 31st August, 1814, finally insisted on their surrendering the certificates of stock which were held by them, although there was not any reference to the condition on the face of said certificates, and after a long delay issued it to those who happened to hold them at the time they should be thus surrendered.

In the judgment of your petitioners this was a manifest departure from the terms of the contract, which greatly embarrassed and injured the said Jacob Barker in the large interests affected by this unsound decision. Nevertheless the parties who might have profited by this advantage, in most cases proved to be sufficiently just to hand over to him this supplemental stock of ten per cent. issued on that portion of the loan on which he was entitled to the benefit of the condition.

The only claim, therefore, now insisted upon is the allowance for the difference between the NOMINAL and REAL value of the paper currency received at the Treasury.

It is true that the government acted oppressively towards the said Jacob Barker in other important respects and thereby inflicted upon him the most serious and fatal injuries, in evidence of which your petitioners refer to the letter of Nathan Lufborough, Comptroller of the Treasury, dated 24th November, 1814, addressed to the Secretary of the Treasury and by him adopted, in words and figures following:

"TREASURY DEPARTMENT,
"Comptroller's office, Nov. 24, 1814.

"SIR: I take the liberty of enclosing, for your approbation, forms of certificates proposed to be printed and issued to the holders of stock in the ten million loan, pursuant to the opinion of the Attorney General enclosed to me in your letter of the 19th instant.

"These forms have become necessary, in order to carry into effect that part of your letter to me of the 22d of this month, which requests that every proper facility may be afforded to the holders of certificates in the above mentioned stock, 'to establish hereafter the identity of the supplemental stock,' (now about to be issued to them,) and its connexion with the ten million loan. The designation, in writing, on the face of the certificates to be issued for the supplemental stock, is made for no other purpose than that of enabling the holder, if he chooses, to preserve its identity and its connexion with the primary stock. The manuscript addition made on the face of the condition intended to be issued in lieu of the original stock, of the ten million loan now in circu-

lation, is intended—1st, to guard the public against imposition, by preventing more supplemental stock from issuing, in any case, than is actually due; and, 2d, to give notice to subsequent purchasers of the stock, that the stipulations contained in the contract between the Secretary of the Treasury and the original subscribers to the loan had been fulfilled, or in other words, that everything relating to that contract, so far as respected the stock in existence, was deemed at the treasury to be settled and closed. There is nothing in this that can have a tendency 'to impair the rights or embarrass the remedies' of the public creditors under the ten million loan for further issues of supplemental stock.

"No exaction is made from them of any release whatever of their rights or claims in this respect. Their rights will still remain with themselves, and their remedies with Congress. The notification, on the face of the certificate, is nothing more than a simple statement and exhibition of a fact which does exist, and which ought to be known, as well to the subsequent purchasers of the stock as to those who now hold it—namely, that the supplemental stock, stated on the face of the certificate to have been issued, was deemed at the treasury to be a full and complete execution of the original contract on the part of the government, so far as regarded the amount of stock to be issued under that contract. This information is already in possession of the agent of the present holders of the stock, or a great portion of it. To keep it from subsequent holders, who might purchase too under the impression that still further benefits are to attach to the stock, might subject the treasury, and with great reason, to imputations which it has hitherto been free from, and which it never will, I trust, be justly liable to, I have deemed it to be my duty to be thus particular in explaining to you the causes for my making the certificates of stock in the forms you see them, and I hope this will be the last time I shall have occasion to trouble you on this very unpleasant business.

"Without, &c.,

"NATHAN LUFBOROUGH,

"Acting Comptroller.

"Hon. SECRETARY OF THE TREASURY."

And to another letter from said Comptroller, dated 30th November, 1814, addressed to the Commissioners of Loans, from which the following extracts are taken:

"CIRCULAR TO CERTAIN COMMISSIONERS OF LOANS.

"TREASURY DEPARTMENT,

"Comptroller's Office, Nov. 30, 1814.

"SIR: I enclose, for your information and government, a copy of a notification, bearing date this day, issued by the Secretary of the Treasury, respecting additional stock to be issued to the subscribers, or those claiming

under them, to the loan of ten millions of dollars of the 2d May, 1814.

"The additional stock in question is to be issued to the persons holding, at the time of application for the additional stock, scrip certificates, or funded certificates of stock of the aforesaid loan of ten millions of dollars, and not to those who may have held the said certificates on the 31st of August last, the day on which a part of the loan for six millions of dollars was taken, unless they shall also hold them at the time of application for the additional stock.

"On the original certificate, thus surrendered, there must be an assignment by the proprietor, or his attorney, agreeably to the forms herewith, marked B. You will perceive that the accounts of the old stock are to be closed on your books and new accounts opened, corresponding with the alteration in the funded certificates hereafter to be issued, a supply of which will be transmitted to you by the Register of the Treasury.

"You will make out duplicate abstracts of the certificates of supplemental stock issued by you, agreeably to the enclosed form, marked C; one of which abstracts you will forward to this office quarter yearly, and file the other in your office.

"It is proper to apprise you, that the Attorney General has given an opinion to the Secretary of the Treasury, setting forth, among other things, that the condition in the letter of the Secretary of the Treasury, of the 2d May, 1814, to the subscribers for the ten million loan, 'attached as soon as the second loan was made, (the loan of August 1814;) that, on the happening of that event, it (the contract) no longer remained open and executory, subject to all the variations in price which might mark subsequent loans, until the whole twenty-five millions should be exhausted.' This opinion has been adopted at the treasury, and the supplemental stock, now authorized to be issued, is deemed to be in full of all demands upon the government for further issues of stocks in the ten million loan, under the contract above mentioned. It is not thought necessary, however, to take any release to this effect from the stockholders, on delivering them the supplemental stock.

"I am, very respectfully, &c.,

"NATHAN LUFBOROUGH."

The intention of this position that the condition attached to the first loan was fully satisfied and discharged by payment of the difference between the first and second loan, was to enable the government to put its stock upon the market at any price whatever, without any further responsibility to the holders of the original stock. This decision of the Treasury was published to the world for the express and avowed purpose of destroying the value of the condition contracted for, and which was to be

enjoyed by those who should hold the stock whenever more favorable terms should be allowed to any subsequent subscriber for any part of the twenty-five millions.

And further, to accumulate hardship and oppression upon the first contractors, of whom Jacob Barker was the most important, the government finally determined to destroy the effect of the condition by applying to Congress for authority to make another loan under a different law. Before one-half the sum authorized to be borrowed by the act of 24th March, 1814, had been obtained by the government, the act of 15th November, 1814, chap. 4, not only authorized a new loan, but expressly empowered the banks of the District of Columbia, then in a state of suspension, to take any part of it. They accordingly did subscribe, and paid their subscriptions in their own depreciated paper. This new loan was made when only about one-half of the twenty-five million loan had been borrowed, a great portion of which yet remains unnegotiated. The effect of this proceeding was to avoid the condition attached to the first loan under the act of the 24th March preceding; but it was evidently a mere evasion which the power of the government rendered effectual to destroy the rights of the parties interested, so far as depended on the market value of the stock, but which no human authority or ingenuity can make consistent with the terms of the original contract, and the sanctity of the national faith.

Your petitioners further state that the said Jacob Barker, in the first instance, and themselves, as his assignees, afterwards, repeatedly applied to Congress for relief, but without effect. At the second session of the 16th Congress, the Senate Committee on Claims made report No. 56 adverse to the claim. At the first session of the 17th Congress the same Committee made Senate report No. 40, and the application was rejected by the Senate. Reference is made to these reports to show that the grounds assumed therein are wholly untenable in law, and in fact. Not convinced by the reasoning of these honorable committees, but still satisfied of the substantial justice of the claim asserted, the petitioners again and again presented their application to Congress, but the same was not definitely acted upon until the second session of the 32d Congress, when, in the House of Representatives the Committee on the Judiciary made report 140, accompanied by bill No. 793, both of which, with all the accompanying papers, were, by resolution of said House, referred to this honorable court for investigation.

Your petitioners further state that on the 10th of April, 1820, the said Jacob Barker made an assignment of this claim, for the benefit of his creditors, to your petitioners and Jesse Hoyt. The latter gentleman declined the trust. No other person, except the said Jacob Barker and his creditors, have any interest whatever in the claim herein presented.

In consideration of the premises, and in pursuance of the reference made by the House of Representatives, your petitioners pray that the court will investigate the demand herein set forth; and believing themselves entitled, as assignees of the said Jacob Barker, to an allowance on three millions four hundred and forty-six thousand one hundred and three 57-100 dollars, equal to the difference between lawful money and the depreciated paper received under the loan of 31st of August, 1814, which said difference was due in stock bearing an interest of six per cent. per annum from the time the money was received by the Treasury of the United States, they pray that the just amount of this allowance may be fairly estimated and reported to Congress for payment.

BROWN, STANTON & WALKER,
Attorneys.

THE EUROPEAN WAR.

Humanity demands an immediate peace, its importance to the manufacturing and commercial interests of the world is not questioned. The war was commenced by France to cement and perpetuate the Napoleon dynasty, and by England to protect her East India possessions.

The idea that it was embarked in from sympathy for Turkey is preposterous. Christians who felt so much sympathy for the oppressed Greeks, would not war in support of infidelity from any such feeling.

The object of France has been attained, while the effect of the war has been to transfer the balance of power from Russia to France. The humiliation of Russia, if that were possible, could not restore to England the prestige she has lost in this war.

Money and men are the great elements of war. The scrupulous fidelity Britain has preserved in all her stock operations has enabled her paper mills to supply the one, of the other she is destitute; her people will not enlist in her armies for foreign service, they prefer to die at home, and the recruits her money procures from the miserable, petty states she has subsidized, cannot restore the glory she has lost.

The use of steam navigation has deprived her of the superiority she enjoyed on the ocean for more than a century; she has to submit, as mortifying as it is, to being considered a second-rate power: hence, the sooner she falls back on her manufacturing and commercial interests the better for her, therefore a general peace may be expected without another year's cam-

paign. These interests will not be promoted by doing Russia further mischief.

As to France, she has already won glory enough in the present war to last her through the reign of her present Emperor, besides, she cannot continue it single-handed without endangering all she has won. She, like her neighbors, lacks money and bread.

The true policy of the United States is to cultivate our commercial relations with all the nations of the earth; to keep out of debt; to keep down taxation; not to waste money on useless fortifications, or naval equipments; have her youths instructed in the art of war, relying on the people to fill the ranks of the army in case such a calamity should befall us, and on small armed vessels, to destroy the enemy's commerce, with which the ocean could be covered in ninety days. Neither prizes or prisoners should be sent home. Such an armament would do the enemy more harm than fifty line-of-battle ships of the largest class could do. This, aided by an embargo and non-importation law, would soon restore peaceful relations.

The intelligence from France indicates that she contemplates abandoning the metallic currency; this apprehension has alarmed the Bank of England; the drain of specie leads to the belief that France means to suspend specie payments full handed.

To arrest so direful a catastrophe there appears to be many projects under consideration, they are all palliatives; peace is the only remedy. The project of doubling the capital of the Bank of France, may have the effect of putting off the evil day for a short time, as it will enable the bank to extend greater facilities to the government; yet pay-day will come, and if the war continues she will have to resort to the paper system, and tender laws; whether the present Emperor is equal to this task is problematical.

The banks of the United States have timely notice, and it behoves them to curtail their liabilities; they should remember that no one can draw their specie who has not a claim therefor, and that the banks are as much bound to pay their debts as individuals are, and therefore have no right to complain when specie is called for. Further contributions from Mr. Barker, on the subject of the finances of the world, were expected for this volume, his other

occupations have prevented their being furnished; therefore we close it by adding an extract from the New York Herald.

[From the New York Herald, October 20, 1855.]

THE COMMERCIAL NEWS BY THE ATLANTIC—FINANCIAL CONDITION OF EUROPE.

The commercial community will find elsewhere a number of extracts from British journals respecting the condition of the finances of the Western Powers. They will not only repay perusal from their intrinsic interest, but may be worth preserving for future reference as materials for the history of finance.

In studying them, care must be taken not to allow the technical phrases of the bankers and financiers to create confusion. The facts are very simple. Here are three nations at war. They start with the following debts:

England.....	\$3,869,615,000
France.....	1,165,000,000
Russia.....	340,000,000

The first year of the war passes over. It is found that it has cost, in round numbers, \$1,500,000,000, divided in the proportion of one-third each to Russia and France, and the remaining third divided between England, Turkey, and Sardinia. The loans have been as follows:

France.....	\$500,000,000
England.....	110,000,000
Russia must have been.....	600,000,000

Now, it may be a question whether any one of these three nations can stand an expenditure of this amount, or maintain its credit while using it at this rate. Of the three Russia would, of course, stand it best, because it has least commerce, its money is in fewest hands, and the government is of that paternal character that measures of gentle coercion can be adopted with regard to property owners without any difficulty. But without entering into a discussion of the effects of the continuance of such a drain on the national resources of the belligerents, two collateral facts of present significance afford quite ample food for reflection.

A few months ago, two alarming phenomena were noticed by the French government—the first was the gradual disappearance of gold, the second was the bad promise of the crops. The former could only be accounted for by the supposition that the *bourgeoisie* of France, who had come forward in such a speculative spirit to subscribe for the imperial loans had repented, lost confidence in the government and were hoarding money; which was the fact. Half a dozen French statutes, declaring it a capital offence to secrete or export gold, prove how prone the French have been to deal thus with their specie, whenever alarm seized them. The second phenomenon was equally unpromising. Ignorant as the French are of political economy, they invariably fly to

the government when famine breaks out, and demand the passage of a law to fix the price of bread and other necessities; the State having, on many occasions, foolishly yielded to the clamor, passed the law, and made up the difference to the producers itself. The forced consequence therefore of the failure of the crops and the general dearness of provisions was the promulgation by the Emperor of two ordinances, the one regulating the price of corn, the other the price of butcher's meat. Needless to explain that these ordinances involve the government in a new expenditure, which cannot be less than several hundred thousand dollars a week. Coming at the very time when the drain on the bank had already embarrassed it, a panic was inevitable. One false step leads to another. After paying to give cheap bread and cheap beef to the Parisians, the Emperor was next forced to pay to give them cheap gold. In other words, the Bank of France, to avoid a suspension, resorted to the despairing experiment of sending to London, buying gold there at a premium, and selling it to its customers at par. Of course, this resource could not be expected to last long. The Bank of England, already fearfully weakened by the secret drafts made by the Russian fund holders, retaliated on its neighbor by raising the rate of interest to $5\frac{1}{2}$; and if the drain continued, it was well understood that it would be raised to 6, or to whatever figure might be necessary to keep the gold at home. What is Napoleon to do? Rumor says that he is about to permit the bank to suspend specie payments and at the same time to double the capital of the bank. When the like measure was proposed in 1806 to his uncle, he answered "That would be for the bank to be coining false money. So clearly do I see the dangers of such a course that if necessary I would stop the payment of my soldiers rather than persevere in it."

The other point which financiers would do well to meditate at the present time is the difference between the position of the belligerents arising out of the difference between their respective currencies. The Western Powers, it must be remembered, work on a specie currency; Russia wholly on a currency of paper, which is made a legal tender. This makes all the difference in the world. Russia only needs to pay a paper maker and an engraver to pay for all the corn, provisions, arms, transportation and soldier's pay she needs. For what saltpetre and other military stores she requires from abroad, she can pay with the gold she draws from Great Britain by selling out the ten or more millions the imperial family have long held in the funds. Whereas the moment France and England cannot pay their debts on demand, their own subjects turn round upon their governments, and a suspension of specie payments becomes inevitable. The very readiness with which the people of France subscribed for the imperial loans may be fatal to

the Emperor in the end; for among so many people some are sure to take fright, sell their *rentes* and demand specie, and spread a panic through the market. As to England, the case is still clearer. The amount of specie in the bank is now a trifle over twelve millions. It was nearly twenty in January; about half the difference has gone to France and the rest has been divided between Russia and the Crimea. It is now understood that an amount of £100,000 in gold goes to the army every week, £5,200,000 a year. It is likewise understood that the amount of funds owned by the family of the late Czar was £10,000,000, in supposing that no portion of the 150,000,000 francs sold out of the French *rentes* in 1848 and 1849 was re-invested in British securities. These facts make it plain that unless peace is speedily made, or some wonderful miraculous change takes place, the event not obscurely foretold by the sagacious writer in the British *Economist*, namely, the repeal of Peel's act and the suspension of specie payments by the Bank of England, will be inevitable, if the government of Great Britain desire to avoid a national bankruptcy.

To show the effect of a suspension of specie payments, we subjoin the following table, showing the depreciation of the British currency during the Napoleonic wars, when specie payments were suspended:

	Average price of gold per oz.			Value of £100 in bank notes.			Depreciation per cent.		
	£	s.	d.	£	s.	d.	£	s.	d.
1800.	3	17	10 $\frac{1}{2}$	100	0	0	Par.		
1801.	4	5	0	91	12	4	8	7	8
1802.	4	3	4	93	9	0	6	11	0
1803.	4	3	6	93	5	3	6	14	9
1804.	4	0	0	97	6	10	2	13	2
1805.	4	0	0	97	6	10	2	13	2
1806.	4	0	0	97	6	10	2	13	2
1807.	4	0	0	97	6	10	2	13	2
1808.	4	0	0	97	6	10	2	13	2
1809.	4	0	0	97	6	10	2	13	2
1810.	4	10	9	86	10	6	13	9	6
1811.	4	5	6	91	1	7	8	18	5
1812.	4	17	10	79	12	0	20	8	0
1813.	5	2	3	76	3	2	23	16	10
1814.	5	6	4	73	4	9	26	15	3
1815.	4	17	9	79	13	4	20	6	8
1816.	4	11	8	84	19	1	15	0	11
1817.	3	19	8	97	15	0	2	5	0
1818.	3	19	9	97	12	11	2	7	1
1819.	4	11	6	95	11	0	4	9	0
1820.	3	19	1	98	9	5	1	10	7
1821.	3	17	10 $\frac{1}{2}$	100	0	0	Par.		

One sovereign weighs 5 dwts. $3\frac{1}{2}$ grs., which, at par, or 77s. $10\frac{1}{2}$ d. per oz., is worth 20s., or a bank note of one pound.

When gold rises in England to £4 and £5 the ounce, our banks may cease to publish weekly statements, and to talk about a specie reserve. Every dollar of gold they have will go, and nothing but a suspension of specie payments here will save the commercial community from a crisis as fatal as, though of a totally different character from, that of 1837.

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